Supreme Court of the United States

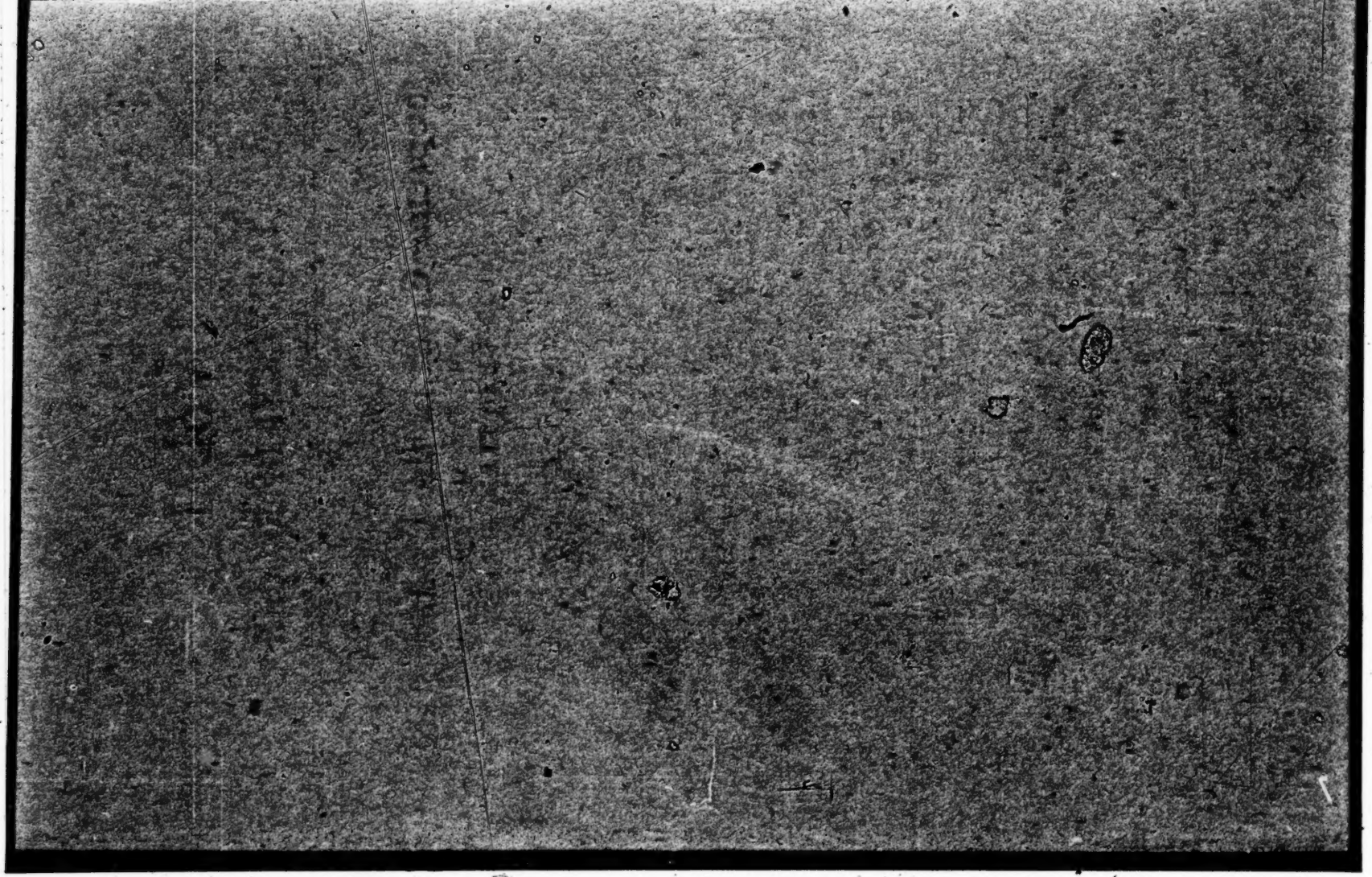
OCTOBER TERM, [illegible]

No. 787

ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION (OF INDIANA), BOARD OF TRADE OF THE CITY OF CHICAGO, AND ACME STEEL COMPANY, APPELLANTS.

THE UNITED STATES OF AMERICA, THE ALTON RAILROAD COMPANY, [illegible] AND SANTA FE RAILWAY COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF [illegible]



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 787

ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION (OF INDIANA), BOARD OF TRADE OF THE CITY OF CHICAGO, AND ACME STEEL COMPANY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, THE ALTON RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

No. 13507

ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION (of Indiana), BOARD OF TRADE OF THE CITY OF CHICAGO, and ACME STEEL COMPANY

vs.

UNITED STATES OF AMERICA, THE ALTON RAILROAD COMPANY et al.

Be it remembered, that the above-entitled action was commenced by the filing of the Bill of Complaint, October 5, 1933, in the above-entitled cause in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division (printed copy filed on this the 14th day of October, 1933).

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

IN EQUITY No. 13507.

Illinois Commerce Commission,
Public Service Commission (of Indiana),
Board of Trade of the City of Chicago,
and
Acme Steel Company,
Plaintiffs,

vs.

United States of America,
The Alton Railroad Company,
The Atchison, Topeka and Santa Fe Railway Company,
The Baltimore and Ohio Chicago Terminal Railroad Company,
The Baltimore and Ohio Railroad Company,
The Belt Railway Company of Chicago,
The Chesapeake and Ohio Railway Company,
Chicago and Calumet River Railroad Company,
Chicago and Eastern Illinois Railway Company, (Charles M. Thomson, Trustee),
Chicago and Erie Railroad Company,
Chicago and Illinois Western Railroad,
Chicago and North Western Railway Company,
Chicago and Western Indiana Railroad Company,
Chicago, Aurora and Elgin Railroad Company, (A. A. Sprague and Britton I. Budd, Receivers),
Chicago, Burlington and Quincy Railroad Company,
Chicago Great Western Railroad Company,
Chicago, Indianapolis and Louisville Railway Company,
Chicago Junction Railway (The Chicago River and Indiana Railroad Company, Lessee),
Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
The Chicago River and Indiana Railroad Company,
The Chicago, Rock Island and Pacific Railway Company,
Chicago Short Line Railway Company,
Chicago, South Shore and South Bend Railroad,
Chicago, West Pullman & Southern Railroad Company,
Elgin, Joliet and Eastern Railway Company,
Grand Trunk Western Railroad Company,
Illinois Central Railroad Company,
Illinois Northern Railway,
Indiana Harbor Belt Railroad Company,
Manufacturers' Junction Railway Company,
The Michigan Central Railroad Company (The New York Central Railroad Company, Lessee),
Minneapolis, St. Paul & Sault Ste. Marie Railway Company,
The New York Central Railroad Company,
The New York, Chicago and St. Louis Railroad Company,
The Pennsylvania Railroad Company,
Pere Marquette Railway Company,
Pullman Railroad Company,
Wabash Railway Company (Walter S. Franklin and Frank C. Nicodemus, Jr., Receivers),
Defendants.

BILL OF COMPLAINT.

BILL OF COMPLAINT.

To the Honorable Judges of the District Court of the United States for the Eastern Division of the Northern District of Illinois, in Chancery sitting:

Illinois Commerce Commission, composed of B. F. Lindheimer, Chairman, Charles E. Byrne and Andrew Olson, citizens of the State of Illinois, is a commission created by an act of the General Assembly of Illinois entitled "An Act Concerning Public Utilities," approved June 29, 1921, as amended, with its office in the Centennial Building, Springfield, Illinois; Public Service Commisison (of Indiana), composed of Perry McCart, Chairman; Moie Cook and Samuel L. Trabue, citizens of the State of Indiana, a commission created, organized and existing under Chapter 93 of the Acts of the General Assembly of the State of Indiana for the year 1933, approved March 2, 1933, with offices in the State Capitol, Indianapolis, Indiana; the Board of Trade of the City of Chicago, a corporation organized and existing under the laws of the State of Illinois, with its principal office at Chicago, Ill., and a citizen of the State of Illinois; Acme Steel Company, a corporation organized and existing under the laws of the State of Illinois, with its principal office at 2840 Archer avenue, Chicago, Illinois, and a citizen of the State of Illinois; present this their bill of complaint against the United States of America, The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Chicago Terminal Railroad Company, The Baltimore and Ohio Railroad Company, The Belt Railway Company of Chicago, The Chesapeake and Ohio Railway

Company, Chicago and Calumet River Railroad Company, Chicago and Eastern Illinois Railway Company, (Charles M. Thomson, Trustee), Chicago and Erie Railroad Company, Chicago & Illinois Western Railroad, Chicago and North Western Railway Company, Chicago and Western Indiana Railroad Company, Chicago, Aurora and Elgin Railroad Company, A. A. Sprague and Britton I. Budd, Receivers, Chicago Burlington & Quincy Railroad Company, Chicago Great Western Railroad Company, Chicago, Indianapolis and Louisville Railway Company, Chicago Junction Railway, (The Chicago River and Indiana Railroad Company, Lessee), Chicago, Milwaukee, St. Paul and Pacific Railroad Company, The Chicago River and Indiana Railroad Company, The Chicago, Rock Island and Pacific Railway Company, Chicago Short Line Railway Company, Chicago, South Shore and South Bend Railroad, Chicago, West Pullman & Southern Railroad Company, Elgin, Joliet and Eastern Railway Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, Illinois Northern Railway, Indiana Harbor Belt Railroad Company, Manufacturers' Junction Railway Company, The Michigan Central Railroad Company, (The New York Central Railroad Company, Lessee), Minneapolis, St. Paul & Sault Ste. Marie Railway Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Pere Marquette Railway Company, Pullman Railroad Company, Wabash Railway Company, (Walter S. Franklin and Frank C. Nicodemus, Jr., Receivers), and thereupon plaintiffs respectfully say:

I.

Plaintiff, Illinois Commerce Commission, is created by the laws of the State of Illinois and is charged with the duty of administering "An Act Concerning Public Utilities," approved June 29, 1921, as amended, hereinafter referred to as the Illinois Commerce Commission Law. Among other duties the Illinois Commerce Commission is given general supervision of all public utilities, including railroads engaged in transportation between points within the State of Illinois, and also has the power to investigate existing or proposed interstate rates where any act in relation thereto shall take place within the State of Illinois, and is authorized to apply to the Interstate Commerce Commission by petition or otherwise or to any court of competent jurisdiction for relief therefrom.

Plaintiff, the Public Service Commission (of Indiana) is created by Chapter 93 of the Acts of the General Assembly of the State of Indiana for the year 1933, approved March 2, 1933, hereinafter referred to as Public Service Commission Act. Among other duties the Public Service Commission (of Indiana) is given general supervision of all public utilities, including railroads engaged in transportation between points within the State of Indiana, and also has the power to investigate existing or proposed interstate rates, where any act in relation thereto shall take place within the State of Indiana, and is authorized to apply to the Interstate Commerce Commission by petition or otherwise or to any court of competent jurisdiction for relief therefrom.

Plaintiff, Board of Trade of the City of Chicago, is a corporation organized and existing under the laws of the State of Illinois, the members of which are engaged in

the purchase, manufacture and sale of grain and grain products.

Plaintiff, Acme Steel Company, is a corporation organized and existing under the laws of the State of Illinois, engaged in the manufacture of steel articles, and joins in this petition on behalf of itself and fifty-seven other corporations, individuals and associations similarly situated, who were parties complainant in Docket 24950 before the Interstate Commerce Commission and all of whom were parties to the proceeding known as Docket 19610, and also on behalf of such other parties as may have a like interest in the subject matter hereof.

All plaintiffs are citizens of their respective states, as above set forth.

II.

The Alton Railroad Company; The Belt Railway Company of Chicago; Chicago and Calumet River Railroad Company; Chicago and Eastern Illinois Railway Company (Charles M. Thomson, Trustee in bankruptcy); Chicago & Illinois Western Railroad; Chicago and Western Indiana Railroad Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago Junction Railway (The Chicago River and Indiana Railroad Company, lessee); Chicago, West Pullman & Southern Railroad Company; Illinois Central Railroad Company; Illinois Northern Railway; and Pullman Railroad Company, are corporations organized and existing under the laws of the State of Illinois, with their respective principal offices and places of business at Chicago, Illinois.

The Atchison, Topeka and Santa Fe Railway Company is a corporation organized and existing under the laws of the State of Kansas, with principal offices and places of business at Topeka, Kansas, and Chicago, Illinois.

The Baltimore and Ohio Chicago Terminal Railroad Company is a corporation organized and existing under the laws of the State of Illinois, with its prineipal office and place of business at Baltimore, Maryland.

The Baltimore and Ohio Railroad Company is a corporation organized and existing under the laws of the State of Maryland, with its principal operating office at Baltimore, Maryland.

The Chesapeake and Ohio Railway Company is a corporation organized and existing under the laws of the States of Virginia, West Virginia and Kentucky, with its principal office and place of business at Richmond, Virginia.

Chicago and Erie Railroad Company and Chicago, Indianapolis and Louisville Railway Company are corporations organized and existing under the laws of the State of Indiana, with their respective principal offices and places of business at Chicago, Illinois.

Chicago and North Western Railway Company is a corporation organized and existing under the laws of the States of Illinois, Wisconsin and Michigan, with its principal office and place of business at Chicago, Illinois.

Chicago, Aurora and Elgin Railroad Company (A. A. Sprague and Britton I. Budd, receivers), is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business at Aurora, Illinois.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company is a corporation organized and existing under the laws of the State of Wisconsin, with its principal office and place of business at Chicago, Illinois.

The Chicago River and Indiana Railroad Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place

of business at New York, New York, and Chicago, Illinois.

The Chicago, Rock Island and Pacific Railway Company is a corporation organized and existing under the laws of the States of Illinois and Iowa, with its principal office and place of business at Chicago, Illinois.

Chicago Short Line Railway Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business at South Chicago, Illinois.

Chicago, South Shore and South Bend Railroad is a corporation organized and existing under the laws of the State of Indiana, with its principal office and place of business at Michigan City, Indiana.

Elgin, Joliet and Eastern Railway Company is a corporation organized and existing under the laws of the States of Indiana and Illinois, with its principal office and place of business at Chicago, Illinois.

Grand Trunk Western Railroad Company is a corporation organized and existing under the laws of the States of Michigan and Indiana, with its principal office and place of business at Detroit, Michigan.

Indiana Harbor Belt Railroad Company is a corporation organized and existing under the laws of the State of Indiana, with its principal office and place of business at New York, N. Y.

Manufacturers' Junction Railway Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business at Cicero, Illinois.

The Michigan Central Railroad Company (The New York Central Railroad Company, lessee) and Pere Marquette Railway Company, are corporations organized and

existing under the laws of the State of Michigan, with their respective principal offices and places of business at Detroit, Michigan.

Minneapolis, St. Paul & Sault Ste. Marie Railway Company is a corporation organized and existing under the laws of the States of Michigan, Wisconsin and Minnesota, with its principal office and place of business at Minneapolis, Minnesota.

The New York Central Railroad Company is a consolidated corporation organized and existing under the laws of the States of New York, Pennsylvania, Ohio, Indiana, Michigan and Illinois, with its principal office and place of business at Albany, New York, and New York, New York.

The New York, Chicago and St. Louis Railroad Company is a corporation organized and existing under the laws of the States of New York, Pennsylvania, Ohio, Indiana and Illinois, with its principal office and place of business at Cleveland, Ohio.

The Pennsylvania Railroad Company is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal operating office at Philadelphia, Pa.

Wabash Railway Company is a corporation organized and existing under the laws of the State of Indiana, with its principal operating office at St. Louis, Missouri. Walter S. Franklin and Frank C. Nicodemus, Jr., are receivers of this property under order of the District Court of the United States for Eastern District of Missouri.

All the defendants above named are corporations, citizens of the states of their incorporation, owning and operating lines of railroad within the Chicago switching district in the State of Indiana and/or in the State of Illinois, and as such are engaged in the interstate trans-

portation of property subject to the provisions of the Interstate Commerce Act, and as their lines of railroad may lie are also engaged in the intrastate transportation of property within the State of Indiana and/or within the State of Illinois and as such are subject to the laws of the State of Indiana and of the laws of the State of Illinois appertaining thereto. The individuals above named are trustees and receivers, operating the lines of railroad under order of the District Courts of the United States and as such are suable under the provisions of the Interstate Commerce Act and related acts.

III.

This is a suit brought pursuant to the provisions of Chapter 32 of the Urgent Deficiency Appropriations Act, approved October 22, 1913, to enjoin, set aside, annul, suspend and restrain the enforcement, operation and execution of an order of the Interstate Commerce Commission entered July 3, 1933, in its Docket 19610, *Switching Rates in the Chicago Switching District*, 195 I. C. C. 89, and to enjoin and restrain the defendants, other than the United States of America, from publishing, demanding, charging, collecting and/or receiving rates alleged to be authorized by the said order of the Interstate Commerce Commission or in any wise to alter, change, cancel or in any manner depart from the rates for switching service set forth in tariffs on file with the Illinois Commerce Commission for intrastate switching between points in the Chicago switching district in the State of Illinois, and/or on file with the Public Service Commission (of Indiana) for intrastate switching between points in the Chicago switching district in the State of Indiana, or to make any effort to modify or change said intrastate switching rates in order to comply with the requirements

of the said order, as more fully hereinafter set forth; and to set aside and hold for nought any and all acts of said defendants, or any of them, performed and done under or in alleged conformity with said order of the Interstate Commerce Commission, dated July 3, 1933.

IV.

The Interstate Commerce Commission, on May 11, 1927, instituted a proceeding of inquiry and investigation into and concerning the lawfulness of rates and charges for switching, within the Chicago switching district, all carload traffic moving in interstate commerce. Extensive hearings were held and on July 31, 1931, a report and order of the said Interstate Commerce Commission was entered (177 I. C. C. 669), a copy of which report and order is attached hereto marked "Appendix A" and is made a part hereof as fully as though set forth herein.

In said report and order the Interstate Commerce Commission approved, as maximum reasonable rates, the following rates for switching carload freight within the Chicago switching district, minimum weight 60,000 pounds per car; one-line hauls, 3 cents per hundred pounds; two-line hauls, 3.5 cents per hundred pounds; and three-or-more-line hauls, 4 cents per hundred pounds. Said rates by voluntary action of the carriers became effective on interstate traffic, except railway equipment on its own wheels, on December 10, 1931. The defendant railroad companies on September 10, 1931, filed with the Interstate Commerce Commission a motion or petition seeking appropriate findings and order authorizing and requiring them upon the record as made in Docket 19610 to establish the same switching rates to apply intrastate in the Chicago switching district within Illinois

and Indiana as were found lawful for interstate application in said district. Thereupon the Interstate Commerce Commission denied said petition insofar as making such an order upon the record already made, but did on November 2, 1931, reopen the proceedings in Docket 19610 for further hearing with respect to the relation of the rates and charges for switching in intrastate commerce to the rates prescribed for like switching in interstate commerce, for the purpose of determining whether the adjustment of the interstate and intrastate rates and charges was unduly prejudicial to interstate shippers and traffic and unjustly preferential of intrastate shippers and traffic, or unjustly discriminatory against interstate commerce, in violation of Section 13 of the Interstate Commerce Act, with a view to the entry of such order or orders as might be necessary to correct such violation or violations, as might be found to exist.

On December 28, 1931, complaint was filed by the plaintiff, Acme Steel Company, and fifty-seven other individuals, corporations and associations with the Interstate Commerce Commission, attacking the lawfulness of the said increased interstate switching rates which became effective on December 10, 1931, which said complaint was docketed as No. 24950. Thereafter defendant railroad corporations filed a motion to dismiss the said complaint without hearing, which motion was denied.

The said reopened Docket 19610 and the said complaint No. 24950, were assigned for hearing at the same time and place; the two cases were heard separately before Examiners Howard C. Faul and W. B. Wilbur, but it was stipulated that any pertinent or relevant testimony in the record in one case should be considered as part of the record in the other case. Separate briefs were required to be filed, but in view of the nature of the testimony and the conclusions reached, the said Exam-

iners issued a consolidated proposed report. A copy of said proposed report is attached hereto and made a part hereof, as fully as though set forth herein, marked "Exhibit B."

Thereafter exceptions were filed by these plaintiffs; oral argument was had and the report and order of the Commission of July 3, 1933, was served on all the parties (195 I. C. C. 89). A copy of said report and order is attached hereto, marked "Exhibit C" and is made a part hereof, as fully as though set forth at length herein.

Said report and order purport to authorize and require the defendant railroad corporations to establish for intrastate switching in the Chicago switching district within Illinos and within Indiana, the same rates as are contemporangously applied to interstate switching of carload freight within the Chicago switching district.

Thereafter, on August 15, 1933, these plaintiffs filed with the Interstate Commerce Commission their joint petition for reopening said proceedings in Dockets 19610 and 24950 for further hearing, for setting aside of the order of July 3, 1933, for reargument and/or reconsideration of the said report and order of July 3, 1933, a copy of which petition is hereto attached, marked "Appendix D" and made a part hereof as fully as though set forth at length herein. Said petition for reopening was denied on October 4, 1933.

Thereafter the defendant carriers filed their joint answer to said petition, dated August 24, 1933, a copy of which answer is hereto attached, marked "Appendix E" and made a part hereof as fully as though set forth at length herein.

Thereafter these plaintiffs filed their joint petition dated September 9, 1933, with the Interstate Commerce

Commission, seeking the suspension of the tariffs of rates and charges purporting to be filed in compliance with the order of July 3, 1933, for the statutory period and for the institution of an investigation into the lawfulness of such proposed rates on intrastate traffic in Illinois and in Indiana within the Chicago switching district, and, in the alternative, for suspension of such tariffs for a period of not less than sixty days to permit careful consideration by the Interstate Commerce Commission of the petition above referred to and also to permit an orderly consideration by any court of competent jurisdiction to which the validity of the order of July 3, 1933, might be submitted for determination, and for appropriate order postponing the effective date of the said order for a like period.

Thereafter, on September 9, 1933, the Interstate Commerce Commission entered its order postponing the effective date of said order for a period of thirty days until October 20, 1933, a copy of said order being attached hereto, marked "Exhibit F" and made a part hereof as fully as though set forth at length herein.

Said petition for suspension of said tariffs was denied on October 4, 1933.

V.

By schedules filed with the Public Service Commission of Indiana prior to April 30, 1927, by their terms purporting to be effective on said date and later dates, carriers operating within the Chicago switching district, in Indiana, proposed to make certain increases and changes in the rates, rules and regulations affecting the handling of commodities included within the so-called Lowrey tariffs within the Chicago switching district and not including commodities carried as exceptions to the Lowrey

basis. By appropriate order, dated April 29, 1927, the Public Service Commission of Indiana suspended the operation of such schedules to August 27, 1927, which were by subsequent orders further suspended to February 1, 1932. All of said tariffs so suspended were the subject of an investigation ordered by the Public Service Commission of Indiana, its Docket No. 8939.

Schedules were filed by the railroad defendants with the Illinois Commerce Commission in which it was proposed to change rates for the transportation of commodities included within the so-called Lowrey tariffs within the Chicago switching district and not including commodities carried as exceptions to the Lowrey basis, which tariffs were suspended on April 19, 1927, by the Illinois Commerce Commission until August 27, 1927, pending a hearing and decision thereon. By appropriate orders the suspension of such tariffs was further extended from time to time until February 1, 1932.

By agreement of all parties to the said proceedings before the Public Service Commission of Indiana, before the Illinois Commerce Commission and the Interstate Commerce Commission, I. C. C. Docket 19610, I. & S. Docket 2900, P. S. C. of Ind. No. 8939, and Ill. C. C. No. 17250, 17269 and 17513 (the latter two dockets embracing proposed increased rates between points in the Chicago switching district and points adjacent thereto) were consolidated and heard jointly on a common record before representatives of the three commissions.

The Illinois Commerce Commission, under date of August 26, 1931, handed down its report, order and requirements, a copy of which is hereto attached, marked "Appendix G" and made a part hereof as fully as though set forth herein at length. By said report and order the Illinois Commerce Commission denied the increases pro-

posed in intrastate switching rates within the Chicago switching district in Illinois. No appeal or judicial review of said report and order was taken or sought by the railroad defendants.

The Public Service Commission of Indiana, under date of August 26, 1931, handed down its report, order and requirements, a copy of which is hereto attached, marked "Appendix H" and made a part hereof as fully as though set forth herein at length. By said report and order the Public Service Commission of Indiana denied the increases proposed in intrastate switching rates within the Chicago switching district in Indiana. No appeal or judicial review of said report and order was taken or sought by the railroad defendants.

By appropriate order, the schedules under suspension in the respective proceedings before the Illinois Commerce Commission and the Public Service Commission of Indiana were ordered permanently canceled as of November 10, 1931.

VI.

In alleged conformity with said order of July 3, 1933, the defendant railroad carriers filed with the Interstate Commerce Commission their various tariffs, a list of which is attached hereto as "Appendix I" by which tariffs the tariffs and schedules naming rates for intrastate switching in Illinois, filed with the Illinois Commerce Commission, were canceled; also tariffs and schedules naming rates for intrastate switching in Indiana, within the Chicago switching district, filed with the Public Service Commission (of Indiana) were cancelled, and other tariffs named in said appendix bearing an I. C. C. number were filed with the Interstate Commerce Commission attempting to make effective for intrastate switching in

Indiana and for intrastate switching in Illinois, within the Chicago switching district, the same rates as were in effect for switching interstate traffic within the Chicago switching district, viz.: 3 cents per hundred pounds for one-line hauls, 3.5 cents per hundred pounds for two-line hauls, and 4 cents per hundred pounds for three-or-more-line hauls, carload minimum 60,000 pounds, with certain exceptions hereinafter set forth.

All one-line rates for switching in the Chicago switching district, both interstate and intrastate, are contained in tariffs filed by individual railroad defendants. All hauls over the lines of more than one of the individual railroad defendants, when moving between industies within the Chicago switching district, are published in joint tariffs of which C. W. Galligan and B. T. Jones are the issuing agents.

The investigation by the Interstate Commerce Commission into the lawfulness of switching rates within the Chicago switching district included only rates for the movement of carload freight to and from industries, and did not include, embrace or determine the lawfulness of rates for switching carload freight to or from team tracks within the Chicago switching district.

VII.

The evidence in justification of the proposed increase in switching rates in the Chicago district from 2.5 cents for one-line and two-line hauls, and 3 cents for three-or-more-line hauls, to 3 cents for one-line, 3.5 cents for two-line and 4 cents for three-or-more-line hauls, presented by the carriers consisted almost entirely of a cost study made by certain defendant carriers during varying one-week periods in 1927, as applied to a traffic test of movement over the lines of all the defendant carriers

in September, 1926. The said cost study, as will more particularly appear from an examination of the reports of the Illinois Commerce Commission and of the Public Service Commission of Indiana, was so inaccurate that it constituted no reliable guide as to the actual costs of the services rendered. The Interstate Commerce Commission expressed the view that it could not accept the cost study as a definite yardstick by which alone to measure the reasonableness of the rates under consideration, and applying other tests to determine the reasonableness of the rates, contrasted the proposed rates with rates which it had prescribed on brick and related articles for application in the southwest, with a distance scale of rates which it had prescribed for application on sand, gravel, crushed stone, etc., between points in Arkansas, Louisiana and Texas and western Louisiana, and with the scale of rates prescribed for application throughout Official Territory on a large list of iron and steel articles. On such findings the Interstate Commerce Commission reached the conclusion that the rates proposed of 3 cents for one-line hauls, 3.5 cents for two-line hauls, and 4 cents for three-or-more-line hauls, carload minimum 60,000 pounds, would not be unreasonable for the future for application on all of the commodities switched within the district, except railway equipment on its own wheels. These plaintiffs appropriately requested the Interstate Commerce Commission to require all the defendant railroad companies to conduct a cost study for representative periods of cars handled in switching service within the Chicago switching district, under joint cooperation of the carriers, the Illinois Commerce Commission, Public Service Commission (of Indiana) and the Interstate Commerce Commission, to be presented as evidence in reopened Docket No. 19610 not only to correct obvious defects in the former cost study but to reflect present

costs, wherein was involved the lawfulness of the relation between interstate and intrastate rates under Section 13 of the Interstate Commerce Act, but said request was denied. The order of July 3, 1933, was made on the record before the Interstate Commerce Commission in Docket 19610 and Docket No. 24950.

VIII.

The said order of the Interstate Commerce Commission, dated July 3, 1933, is unlawful and void in the following respects:

(a) The Commission was without authority either in law or in fact to make the said order.

(b) The order is void because there is no evidence upon which the Commission could find that the rates of 2.5 cents for one-line and two-line hauls, and 3 cents for three-or-more-line hauls, in intrastate switching in the State of Illinois, within the Chicago switching district, and in the State of Indiana, within the Chicago switching district, constitute an unjust discrimination against interstate commerce.

(c) The Commission failed to make requisite findings:

1. The intrastate rates within Illinois and within Indiana are less than just and reasonable rates.

2. The amount of the revenue which each of the defendant railroads has derived, or could reasonably be expected to derive, on intrastate traffic in Illinois and in Indiana, separately stated as to one-line, two-line and three-or-more-line hauls, under the present rates and under the rates which were found not unreasonable by the Interstate Commerce Commission for application on interstate traffic.

IX.

The order is void because based on the following findings which were unsupported by any evidence before the Interstate Commerce Commission:

(a) That the maintenance of lower intrastate rates by the railroad defendants in the Chicago switching district than are contemporaneously effective on interstate commerce in the Chicago switching district results and will for the future result in unjust discrimination against interstate commerce.

(b) That the record is convincing that the carriers will derive a substantial increase in revenue if the intrastate rates are increased to the interstate basis.

(c) That no substantial proportion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if the rates found reasonable for interstate traffic are applied to intrastate traffic.

Not only is there no evidence to support the findings just referred to, but the record abundantly supports the recommendation of the examiners in their proposed report that the commission find that the carriers will lose instead of gain revenue by increasing the intrastate rates to the interstate basis. Moreover, since the record closed before the Interstate Commerce Commission, additional facts have been developed which were brought to the attention of the Interstate Commerce Commission in petition for reopening dated August 15, 1933, page 68 *et seq.* (Appendix D hereto) showing that if the intrastate rates be increased to the interstate basis the carriers will lose additional business to that already covered by testimony before the Commission, further demonstrating that increasing the intrastate rates to the interstate level in the Chicago switching district will result in diversion of

many commodities in large and increasing tonnage from rail transportation to other forms of transportation in the Chicago switching district.

X.

The order is void because the evidence on which it is based shows conclusively:

(a) The service performed in intrastate switching in the Chicago switching district in Illinois and in Indiana is substantially less than that performed in interstate traffic.

(b) The disparities between the intrastate rates, as authorized by the Illinois and Indiana commissions, on the one hand, and the interstate rates, authorized by the Interstate Commerce Commission, on the other hand, are justified by the difference in service for which the respective rates are charged.

The average one-line haul in Illinois intrastate is 7.46 miles; in Indiana intrastate, 6.3 miles, the average for the two states intrastate being 7.2 miles; and in interstate commerce 15 miles; the Illinois intrastate average being 49.7 per cent, and the Indiana average being 42 per cent, of the average interstate haul. The rate in effect on July 3, 1933, intrastate in Illinois and in Indiana of 2.5 cents for one-line haul is 83.3 per cent of the interstate rate of 3 cents for one-line.

The Illinois intrastate average two-line haul is 15.9 miles, the Indiana intrastate average two-line haul is 7.3 miles, the average intrastate two-line haul for both states is 15.6 miles; and the interstate average two-line haul is 27.5 miles. The two-line average haul for Illinois of 15.9 miles is 57.8 per cent; for Indiana of 7.3 miles is 26.5 per cent, and for the intrastate average for both Illinois and Indiana of 15.6 miles is 56.7 per cent of the

two-line interstate average haul of 27.5 miles. The 2.5-cent rate for two-line hauls intrastate is 71.4 per cent of the two-line interstate rate of 3.5 cents.

The three-line average haul for Illinois intrastate traffic is 23.4 miles and for interstate traffic is 34.2 miles. There was no three-line intrastate haul in Indiana shown by cost or revenue tests. The Illinois three-line average haul is 68.4 per cent of the interstate three-line average haul of 34.2 miles. The 3-cent intrastate rate applicable for three-or-more-line hauls is 75 per cent of the 4-cent three-or-more-line haul interstate rate.

Any disparity in rates intrastate and interstate is much more than justified by the difference in the average service performed intrastate and interstate. It was on this ground that Chairman Farrell and Commissioner Mitchison dissented from the report and order of the Commission of July 3, 1933.

(c) Intrastate rates charged for switching services on Illinois intrastate traffic and on Indiana intrastate traffic are not less than just and reasonable rates.

(d) While interstate rates now in effect were found not unreasonable by the Interstate Commerce Commission on the record closed in 1928, that finding was predicated largely on a cost study ascertained as to certain traffic moving during certain periods in 1927 over certain railroads applied on certain traffic moving in September, 1926. The record fails to show that in view of changed conditions those rates are now not in excess of just and reasonable rates and in excess of what the traffic will bear.

(e) The interstate rates prescribed by the Interstate Commerce Commission for application on switching traffic in the Chicago switching district are so high that a large proportion of the switching traffic has been di-

verted from the rails of the carriers to competing forms of transportation, such as plant facilities, trucks, waterways and pipe lines, and increasing the intrastate rates to the interstate level will increase the volume of traffic so diverted from the rails of the carriers to such competing forms of transportation.

(f) Of the thirty-seven railroad defendants subject to the Interstate Commerce Commission's order of July 3, 1933, only the following carriers apply one-line interstate rates authorized by the Commission for transportation in the Chicago switching district:

The Baltimore and Ohio Chicago Terminal Railroad Company,
Chicago and Erie Railroad Company,
Indiana Harbor Belt Railroad Company,
The Michigan Central Railroad Company,
The New York Central Railroad Company,
The New York, Chicago and St. Louis Railroad Company,
The Pennsylvania Railroad Company.

None of the remaining railroad defendants perform any one-line interstate switching, but all do perform one-line intrastate switching. By reason thereof there can be no unjust discrimination against one-line interstate traffic resulting from the rates of different carriers for one-line intrastate switching, charged by the carriers performing intrastate one-line switching service and no similar interstate service.

(g) There are a large number of commodities moving one-line intrastate in Illinois and one-line intrastate in Indiana that are not shown to move one-line interstate in the Chicago switching district. Rates on such commodities cannot discriminate unjustly against interstate traffic that does not exist in the case of such commodities.

(h) The record does not disclose the revenue which

each of the defendant railroads has derived or which could reasonably be expected to be derived on intrastate traffic in Illinois and in Indiana separately stated as to one-line, two-line and three-or-more-line hauls, either under the present rates or under the rates which were found not unreasonable by the Interstate Commerce Commission for application on interstate traffic, and therefore the Commission could not make the finding which under the law they must make as to the revenue derived under present rates and which will be derived under rates required to be made effective by the order of July 3, 1933, from which could be determined whether the carriers will have more revenue if the order becomes effective than if the present rates remain in effect.

(i) Increasing intrastate rates of the railroad defendants in Illinois and in Indiana to the level prescribed for interstate rates in the Chicago switching district will reduce the volume of business handled and the revenue received by such defendants below the amount they now receive for the transportation of intrastate traffic on the rates now in effect.

(j) The revenues of each of the defendant railroads on intrastate switching traffic in Indiana and in Illinois contribute their fair proportion of their revenues which are ample to maintain an adequate transportation system, and cast no undue burden upon the interstate revenues of each individual defendant railroad.

(k) The cost studies presented by the defendant railroads to the Interstate Commerce Commission are based on arbitrary assumptions involving the use of unweighted averages, are of carriers not representative of the entire switching district, are of alleged costs of a few of the carriers for periods of time entirely too limited in scope and not representative of the business over a period of time sufficient to reflect the average an-

nual cost of switching service in the Chicago switching district, were made six years ago, were applied against traffic moving seven years ago, and include services performed outside the Chicago switching district, and therefore are so remote and so irrelevant as to be wholly improper as a basis for finding present costs, and are otherwise so defective as to constitute no proper basis for a finding as to reasonableness or unreasonableness of rates now in effect, or which were in effect prior to December 10, 1931, and which are proposed to be made effective October 20, 1933, on interstate traffic and on intrastate traffic.

(l) The cost studies presented in evidence by the railroad defendants before the Interstate Commerce Commission with all their defects, and giving full effect to all modifications suggested by shippers, state commissions and rail carriers, tend to show that rates now in effect on intrastate traffic for one-line, two-line and three-or-more-line hauls, contribute their fair proportionate share of the revenues of each of the railroad defendants, and there is no evidence from which it can be found that present intrastate rates in Illinois and in Indiana fail to produce their fair proportionate share of revenues which the commodities transported in the Chicago switching district under such rates should yield to each of the railroad defendants.

(m) The nine railroad defendants engaged exclusively in switching service in the Chicago switching district, viz:

The Baltimore and Ohio Chicago Terminal Railroad Company,

The Belt Railway Company of Chicago,

Chicago & Illinois Western Railroad,

Chicago River and Indiana Railroad Company—Chicago Junction Railway,

Chicago Short Line Railway Company,
Chicago, West Pullman & Southern Railroad Company,
Illinois Northern Railway,
Indiana Harbor Belt Railroad Company,
Pullman Railroad Company,

showed a prosperous condition; the switching rates yielded ample revenue for all necessary purposes and a fair return upon the fair value of their common carrier properties.

(n) Inasmuch as the Interstate Commerce Commission has properly found in its report that the maintenance of intrastate switching rates within the Chicago switching district in Indiana and in Illinois on a lower basis than the corresponding all-commodity rates in interstate switching service, has not caused nor will cause, any undue preference and advantage to persons or localities in intrastate commerce or any undue prejudice and disadvantage to persons or localities in interstate commerce, within the Chicago switching district, it must follow that no unjust discrimination results or can result against the interstate traffic within the Chicago switching district of such persons paying the revenue on the interstate traffic, or the localities within the Chicago switching district between which such interstate commerce is handled.

(o) The service rendered on intrastate traffic in Indiana and in Illinois and the service performed on interstate traffic within the Chicago switching district, are not of a like and contemporaneous character performed under substantially similar circumstances and conditions. The intrastate traffic and the interstate traffic within the Chicago switching district are not of a like kind. The disparity between the level of interstate rates and of intrastate rates is not so substantial as to operate as a

real discrimination against, and obstruction to, interstate commerce.

(p) There was no evidence from which the Commission could find that intrastate rates on grain in Illinois and/or in Indiana in the Chicago switching district, constitute an unjust discrimination against interstate commerce. At no time prior to July 31, 1931, was any tariff filed with the Interstate Commerce Commission proposing any increase in interstate switching of grain and only as a result of the order of the Commission of July 31, 1931, was there any increase in rates of switching on grain, which then ranged from $4.95 per car to $6.75 per car. Subsequent to July 31, 1931, the interstate switching rates on grain in alleged conformity with the order of July 31, 1931, effective December 10, 1931, were increased to 3 cents per hundred pounds for one-line hauls, 3.5 cents for two-line hauls and 4 cents for three-or-more-line hauls, minimum 60,000 pounds per car, the increases over the prior rates approximating 400 per cent for one-line hauls, 250 per cent for two-line hauls, and 150 per cent for three-or-more-line hauls. At no time have the defendant railroad companies filed any tariffs or made any effort to increase intrastate switching rates on grain in Chicago switching district in Illinois and/or in Indiana, and no investigation has been made by either the Illinois Commerce Commission or the Public Service Commission (of Indiana) as to the lawfulness of present intrastate rates on grain within their respective jurisdictions.

When the so-called Lowrey agreement became effective in 1910, establishing the so-called all-commodity basis of switching rates within the Chicago switching district, rates on grain, coal and coke were specifically excepted from the rates provided for in said agreement. From that date until the date hereof rates on grain for intra-

state switching in Illinois and in Indiana within the Chicago switching district have been published as exceptions to the all-commodity basis, and on interstate shipments within the Chicago switching district interstate rates prior to July 31, 1931, were carried as an exception to the all-commodity interstate basis provided for in the said Lowrey agreement.

The grain switching rates within the Chicago switching district, both interstate prior to December 10, 1931, and intrastate to date hereof, were voluntarily established by the railroad defendants and maintained for approximately twenty years and thus are *prima facie* reasonable rates; there was no evidence whatever in the record to justify the increases in said grain switching rates under the order of the Commission of July 31, 1931. The situation with respect to grain switching rates is typical of the situation as to all other commodities which are carried on rates less than the Lowrey basis.

The evidence before the Interstate Commerce Commission showed that present intrastate rates on grain within the Chicago switching district are not less than just and reasonable rates and there was no evidence upon which the Commission could find otherwise. There was no specific finding by the Commission that intrastate rates on grain in the Chicago switching district constituted an unjust discrimination against interstate traffic.

XI.

The order of the Interstate Commerce Commission of July 3, 1933, is void by reason of its indefiniteness and lack of precision in the following respects:

(a) The order of the Commission requires each of the individual rail carriers "according as they participate in the transportation" to establish on intrastate

traffic, rates which are not less than those "contemporaneously applied by said carriers to the transportation by them of all commodities in interstate switching service." The order of the Commission is indefinite in that it fails specifically to except from the order those carriers which perform a one-line haul in intrastate commerce but perform no one-line haul in interstate commerce.

(b) The entire inquiry and investigation of the Commission was directed solely to switching service performed between industries in the Chicago switching district, but the order of the Interstate Commerce Commission is broad enough to include switching service performed between team tracks and industries, and between team tracks within the Chicago switching district. The order is indefinite in that it fails precisely to exclude traffic moving to or from team tracks within the Chicago switching district. For these reasons the order of the Commission is indefinite and therefore void.

XII.

The Commission erred in refusing to reopen the proceedings in Docket 19610, in refusing and failing to vacate its order of July 3, 1933, and in refusing to set the case for further hearing, as prayed for in plaintiffs' joint petition of August 15, 1933, and therefore the order of July 3, 1933, is void and should not be permitted to go into effect.

XIII.

At the hearing herein plaintiffs will tender in support of the allegations herein a certified copy of the record before the Interstate Commerce Commission out of which the order of July 3, 1933, was issued.

XIV.

Each of the railroad defendants has filed with the Illinois Commerce Commission and with the Public Service Commission (of Indiana) to the extent that their individual lines lie within those respective states, tariffs canceling the intrastate rates now in effect of 2.5 cents for one-line and two-line hauls, and 3 cents for three-or-more-line hauls, and with certain exceptions have filed with the Interstate Commerce Commission schedules containing rates which are in excess of those now in effect on intrastate traffic, in alleged conformity with the order of the Interstate Commerce Commission of July 3, 1933. Inasmuch as the order, in alleged conformity with which the rates established on intrastate traffic are increased to the level of the interstate rates, is void, the order of this court setting aside the order of the Interstate Commerce Commission herein complained of will not grant full measure of relief to these plaintiffs unless all action which has been taken by the individual railroad defendants and the action of their joint agents be set aside and held for naught, thereby restoring and making effective the lawful intrasfate rates in effect on July 2, 1933, in Illinois and in Indiana in the Chicago switching district.

On such traffic as will continue to move in intrastate commerce within the Chicago switching district in Illinois and in Indiana, the plaintiff, Acme Steel Company, and others similarly situated, will each be compelled to pay increased rates and charges aggregating sums in excess of $3,000.00, thereby subjecting plaintiff Acme Steel Company and others on whose behalf this suit is brought to irreparable loss and injury.

In consideration whereof, forasmuch as your plaintiffs are remediless in the premises at law, and relievable only

in a court of equity, plaintiffs pray that a preliminary or interlocutory order or injunction be entered restraining and suspending the enforcement, operation and execution of the said order of the Commission until final determination of this cause, and that upon the final hearing herein a decree be entered perpetually enjoining, suspending, annulling and setting aside the enforcement, operation and execution of said order.

And plaintiffs further pray that a preliminary or interlocutory order or injunction be entered, requiring the railroad defendants, and each of them, to cancel the tariffs herein referred to, filed in alleged conformity with the said order of the Interstate Commerce Commission, and suspending the enforcement of the rates therein provided for on intrastate traffic until final determination of this cause, and that upon the final hearing herein a decree be entered perpetually enjoining, suspending, annulling and setting aside the said tariffs and requiring the said defendants to file new tariffs restoring the rates in effect on July 2, 1933, on intrastate traffic in Illinois and in Indiana in the Chicago switching district, unless and until authorized to be changed by the Illinois Commerce Commission and or Public Service Commission (of Indiana), in accordance with the laws of their respective states.

And plaintiffs further pray, inasmuch as the purpose of the foregoing prayers for relief is to set aside the order of the Commission of July 3, 1933, and to restore the status quo of July 2, 1933, for such other and further orders or decrees as may be necessary to set aside said order of the Interstate Commerce Commission, and to require the railroad defendants, and each of them, to vacate, annul and set aside any and all action which may have been taken under and by reason of said order of the Commission, and to take such action as may be nec-

essary to restore the parties and properties affected by said order to the status of July 2, 1933; and for such further and other relief in the premises as the nature of the case shall require, and to this court shall seem meet.

And your plaintiffs further pray, that your Honors will direct proper writs of subpoena be issued and that a copy of this bill of complaint be forthwith served upon each and every of the defendants herein named, in the manner provided in the Acts of Congress, and your plaintiffs will ever pray.

IRVIN ROOKS,
Solicitor for Illinois Commerce Commission.

PHILIP LUTZ, JR.,
HERBERT J. PATRICK,
Solicitors for Public Service Commission (of Indiana),

HERBERT J. CAMPBELL,
Solicitor for Board of Trade of the City of Chicago.

LUTHER M. WALTER,
Solicitor for Acme Steel Company.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

O. R. LIVINGHOUSE, of Indianapolis, Indiana, on oath states that he is director of Tariff Bureau, Public Service Commission (of Indiana), one of the plaintiffs in the above entitled cause; that he has read the above bill of complaint and knows the contents thereof, and that the same are true of his own knowledge.

(Signed) O. R. LIVINGHOUSE.

Subscribed and sworn to before me, this 4th day of October, 1933.

(Signed) M. M. KELLER.
Notary Public.

(Seal)

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APPENDIX A.

17096

INTERSTATE COMMERCE COMMISSION

No. 19610 [1]

SWITCHING RATES IN CHICAGO SWITCHING DISTRICT

Submitted December 4, 1930. Decided July 31, 1931

1. Upon general investigation of the switching rates, carloads, applicable within the Chicago switching district, reasonable rates prescribed to apply on an all-commodity basis, except railway equipment on own wheels.
2. Use of private equipment to be compensated for by rental charges instead of reductions in switching rates.
3. Rates proposed for application between Chicago Heights Ill.; and the Chicago switching district not shown to be unlawful, except in so far as such rates may be in conflict with the findings in *Indiana State Chamber of Commerce v. A. T. & S. F. Ry. Co.*, 122 I. C. C. 81.
4. Schedules of proposed changes in rates under suspension in Investigation and Suspension Docket No. 2900 ordered canceled without prejudice to the filing of new schedules in conformity with the findings herein.
5. Complaint in Docket No. 20006 dismissed.

J. N. Davis, J. R. Barse, P. F. Gault, E. A. Smith, D. P. Connell, Guernsey Orcutt, H. I. Allen, H. D. Shean, and *Nelson Trattman* for railroads serving Chicago switching district; *Sherman A. Gillett* for Chicago & North Western Railway; *J. H. Brown* for Belt Railway Company of Chicago; *M. S. Connelly* for Pennsylvania Railroad; *K. L. Richmond* and *J. F. Connors* for Chicago & Eastern Illinois Railway Company; *T. F. Dooley* for Chicago & Calumet River Railroad Company; *R. C. Davidson* for Chicago, Rock Island & Pacific Railway Company; *T. E. Bond* for Elgin, Joliet & Eastern Railway Company; *W. G. Wagner* for Chicago, Burlington & Quincy Railroad Company; *F. C. Furry* for Illinois Central Railroad Company and Chicago & Illinois Western Railroad Company; *Guy A. Gladson* for receivers of Chicago & Alton Railroad Company; *B. S. Lottenville* for Chicago Heights Terminal Transfer Railroad Company; and *C. W. Galligan* for Illinois Freight Association.

John F. Bonner for Minnesota Railroad and Warehouse Commission; *W. A. Anderson* for Railroad Commission of Wisconsin; *D. L. Kelley* for South Dakota Board of Railroad Commissioners; and *Claude L. Draper* for Public Service Commission, State of Wyoming.

Luther M. Walter for Chicago Shippers Conference Association and Chicago Association of Commerce; *C. E. Hochstedler* for Chi-

[1] This report also embraces Investigation and Suspension Docket No. 2900, Switching Rates Between Points in Chicago and Chicago Heights Districts and No. 20006, Illinois Slag & Ballast Company v. Chicago, West Pullman & Southern Railroad Company et al.

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cago Association of Commerce; *R. B. Coapstick* for Indiana State Chamber of Commerce; *J. S. Brown* and *H. J. Campbell* for Board of Trade for City of Chicago; *Frank B. Townsend* and *Lee Kuempel* for Minneapolis Traffic Association; *Fred S. Keiser* for Duluth Chamber of Commerce; *J. D. Humphrey* for Hammond Chamber of Commerce, Hammond Manufacturing Association, and others; *H. F. Sundberg* for Chamber of Commerce, Cedar Rapids, Iowa; *R. I. Pierce* for Terre Haute Chamber of Commerce and Highland Iron & Steel Company; *Howard P. Roe* and *Ernest S. Ballard* for city of Chicago Heights, Ill.; *F. B. McElroy, C. B. Cardy* and *R. I. Pierce* for Manufacturers Association of Chicago Heights, Ill.; *L. G. Macomber* for Detroit Board of Commerce; and *Ralph N. Newmann* for Lions Club of Des Plaines.

Murray N. Billings for Illinois Steel Company; *Henry C. Keene*, and *Harry C. Ames* for Grasselli Chemical Company; *W. J. Hammond* and *R. R. Flynn* for Inland Steel Company; *W. Y. Wildman* and *R. W. Ropiequet* for Illinois Coal Traffic Bureau; *George Patterson Boyle* for Illinois Slag & Ballast Company; *Walter Hayes* for Sears, Roebuck Company; *H. R. Park* for Chicago Live Stock Exchange; *E. S. Gubernator, R. S. Waterbury*, and *E. W. Glaesel* for Lehigh Portland Cement Company; *Robert J. McBride* and *Warren Burkhart* for Illinois Lumber & Material Dealers Association, Burgess Battery Company, Beloit Iron Works, and Jos. F. Herman Company; *J. D. Forrest* and *G. H. Staut* for By-Products Coke Corporation; *Robert Hula* for Clayton Mark & Company; *W. M. O'Keefe* for Chicago Mercantile Exchange and Live Poultry & Dairy Shippers Association; *Herman Mueller* for St. Paul Association of Public & Business Affairs; *C. B. Cardy* and *W. F. Garman* for Manufacturers Association of Chicago and stone producers in Chicago switching district; *J. W. McRae* for Pennoyer Merchants Transfer Company; *W. F. Coyne* and *W. R. Sanborn* for Lehigh Stone Company; *Quinn Morton* for C. L. Willey Company; *C. A. Shank* for National Brick Company; *W. M. Councill* for National Fireproofing Company; *H. H. Bascom* for Youngstown Sheet & Tube Company; *C. T. Stripp* for National Malleable & Steel Castings Company; *A. R. Miller* and *H. G. Brown* for Illinois Brick Company; *H. W. Robertson* and *H. H. Singer* for Sinclair Refining Company; *Burton H. Atwood* and *C. B. Ackerman* for Elmhurst-Chicago Stove Company; *J. L. Roberts* and *N. L. Shannon* for Barrett Company; *Alfred S. Knowlton* for American Tar Products Company and Chicage By-Product Coke Company; *Adam Bessolo, A. M. Cordell*, and *Alfred S. Knowlton* for Standard Steel Car Company and subsidiaries; *T. W. Mackey* for Western Shade Cloth Company; *Fred C.*

Rose for Marsh & Truman Lumber Company; *John D. Ross* for General Chemical Company; *F. D. Porter* for S. Berkenstine Sons, Incorporated; *P. St. Pierre* for A. L. Randall Company and Dure Paper Products Company; *L. E. Whitney* for National Pickle Packers Association; *F. W. Rogers* for Flintkote Company; *M. H. Strothman* for Washburn Crosby Company; *Sam Frier* for Wholesale Sash & Door Association; *E. C. Wilmore* for Sefton Manufacturing Company; *C. D. Miller* for American Maize Products Company; *F. F. Grubbs* for Chapin & Company; *M. S. Allison* for Federal Cement Tile Company; *A. L. Dreher* for Hyman-Michaels Company; *F. M. Garland* and *A. M. Cordell* for Pressed Steel Car Company; *M. D. Perry* for Union Drawn Steel Company; Gary Screw & Bolt Company, and Pittsburgh Screw & Bolt Company; *R. D. Reeds* and *E. F. Pine* for Confectioners Traffic Association and E. J. Brach & Sons; and *A. E. Huenergoger* for Confectioners Traffic Association and Zion Institutions & Industries;

R. E. Riley for Chicago Brick Company, Chicago Brick Exchange, Lake Sand Corporation, and L. Richard Company; *F. H. Belden* and *E. S. Huebner* for Marblehead Lime Company; *F. D. Wilder* for Chicago Railway Equipment Company; *R. C. Livingston* for Interstate Iron & Steel Company; *F. C. Favor Paper Company* for Chicago Paper Association; *J. H. Kane* for Material Service; *T. P. Scanlon* for J. B. Inderreiden Company and Amber Furniture Company; *H. N. Williams* for Jewel Tea Company; *J. T. Dover* and *W. J. Brown* for McClintic-Marshall Construction Company; *E. W. Sieboldt* and *J. R. Van Slyke* for Roxana Petroleum Corporation; *A. E. Sicilia* for Chicago Wool Trade Association; *P. A. McFarlane* for Wisconsin Lime & Cement Company; *H. J. Meilahn* for J. J. Bradenoch Company; *H. F. Obermayer* for Stratton Grain Company and Quincy Elevator Company; *W. J. M. Lahl* for American Seating Company; *A. A. Adams* for Chicago Retail Lumber Dealers Association and Edward Hines Lumber Company; *H. B. Kahl* for Sprague Warner Company; *Alfred E. Treen* for Illinois Slag & Ballast Company; *W. S. Short* for Seaman Paper Company and H. P. Smith Paper Company; *S. A. Poyer* for Chicago Bridge & Iron Works; *Irwin W. Hart* for Franklin MacVeagh & Company; *F. R. Jerome* for Traffic Bureau of Associated Industries; *L. J. Thomas* for Johns-Manville Corporation; *Arthur W. Fredrickson* for Commonwealth Edison Company; *D. C. Norris* for Wolff Manufacturing Company; *Wm. Lister* for city of Evanston; *W. J. Womer* for Chicago District Ice Association and Lincoln-Boyle Ice Company; *John W. Bingham* for Corn Products Refining Company; *W. J. Rowley* for Albert Dickinson Company; *R. C. Ross* for Jos. T. Ryerson & Son; *B. J. Klein* for Southern Cotton Oil Company;

Henry Hauseman for Pure Oil Company; *J. A. Brough* for Crane Company; *R. E. Kosmar* for R. F. Conway Company; *J. L. Hodgson* for American Sand & Gravel Company; *Walter E. McCornack* for Chicago Gravel Company and Chicago Stone Company; *W. H. McReynolds* for Manitowoc Portland Cement Company; *F. S. Hollands* and *H. T. Zaremba* for Standard Oil Company of Indiana; *John J. McGovern* for American Linseed Company and Best Foods Company; *John H. C. Kirk* for Darling & Company; *F. B. McElroy* for Whiteacre Greer Fireproofing Company, and American Manganese Steel Company; *Leonard C. Reincke* and *David Dunn* for Wm. Wrigley, Jr., Company; *M. A. Erickson* for Shotwell Manufacturing Company; *Fred Mueller* for Cracker Jack Company; *J. H. Matheson* for Columbia Mills, Incorporated; *H. S. Welton* for Victor Chemical Company; *F. D. Porter* for National Association Waste Materials, Incorporated; *B. J. Roggenbuck* for John F. Jelke Company and Geo. P. Brown Company; *B. H. Rubenstein* and *L. A. Boulger* for Ruberoid Company; *Charles W. Stadell* and *H. D. Pixley* for Carson Pirie Scott & Company; *W. J. Buchanan* for Terminals & Transportation Corporation of Illinois; *Alexander Stuart* for Rosenbaum Grain Corporation; *R. W. Campbell* for Butler Paper Corporation; *F. D. Hassian* for Rathbone, Hair & Ridgway Company and Shavings & Sawdust Corporation; *Charles A. Livingston* for Illinois Manufacturers Association; *W. D. Lindsay* for United States Gypsum Company; *Anton J. Berger* for Construction Materials Company; *James B. O'Rear* for Acme Steel Company; *H. A. Brandon* for Bird & Son, Incorporated; *C. C. Tiffany* and *Osborn Van Brunt* for Certain-teed Products Corporation; *J. J. Low* for Briggs & Turivas, Incorporated; *R. R. Hargis* for Wilson & Company; *Paul E. Blanchard* and *John R. Baker* for Armour & Company; and *R. D. Rynder* and *Wm. N. Strack* for Swift & Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Exceptions to the report proposed by the examiners were filed by many of the interested parties, to which certain of the parties replied, and the case was orally argued. Our conclusions differ somewhat from those proposed by the examiners.

In No. 15110, *Jones & Laughlin Steel Corp.* v. *B. & O. R. R. Co.*, 96 I. C. C. 682, decided April 15, 1925, we prescribed a distance scale of reasonable maximum rates on iron and steel articles, in carloads, from the Pittsburgh group to St. Louis, Mo., and to certain destinations in Illinois and Indiana, and found the rates on the same articles from points in Illinois and Indiana to the same destinations to be unduly preferential. Subsequently, the carriers attempted to realign

the rates on iron and steel articles in Illinois Freight Association territory to conform with the scale of rates prescribed in *Jones & Laughlin Steel Corp. v. B. & O. R. R., supra*, hereinafter referred to as the 15110 scale. The rates proposed were filed to become effective April 25, 1926, but the schedules were suspended in I. & S. No. 2658, *Iron and Steel between Points in Illinois Freight Committee Territory*, because of the failure to realign at the same time the rates on iron and steel articles within the Chicago switching district, hereinafter called the district, and also because of the failure of several of the interested carriers to revise the rates from Gary, Ind., to points within the district in harmony with the 15110 scale. The suspension order subsequently was vacated, except as to the rates from Chicago Heights, Ill., and Gary. Thereupon, at the request of the commission, the carriers gave consideration to a realignment of the rates on iron and steel articles between Chicago Heights and Gary on the one hand, and points within the district on the other, and between points within the district. Tariffs were filed to become effective October 20, 1926, naming rates to apply within the district of 3, 5.5, and 6.5 cents, respectively, for one, two, and three-or-more line hauls, carload minimum 60,000 pounds, with an alternative rate of 8 cents, minimum 36,000 pounds, applicable to two and three line hauls. These schedules, upon protest, also were suspended in I. & S. No. 2780, *Iron and Steel Between Points in the Chicago Switching District*. The cases[2] were heard in part on February 16, 1927.

In the meantime numerous conferences were held between the carriers and representatives of various shippers in the Chicago district with a view to reaching an amicable adjustment of the rates on all commodities moving within the district. Thereupon, respondents in No. 2658 and No. 2780 filed tariffs effective March 19, 1927, canceling the schedules under suspension, and the proceedings were discontinued. As a result of these conferences the carriers filed new schedules to become effective April 30, 1927, and on later dates, naming rates of 3, 3.5, and 4 cents to supersede the effective rates of 2.5, 2.5, and 3 cents, respectively, for 1-line, 2-line and 3-or-more-line hauls, for application within the district, such rates to apply not only on iron and steel articles but on commodities generally, except grain, grain screenings, and railway equipment on own wheels, and excepting livestock via the Baltimore & Ohio Chicago Terminal Railroad, and similar rates to apply on the same commodities[3] between points in the district on the one hand and Chicago Heights on

2 Including Investigation and Suspension Docket No. 2713, Iron and Steel Articles from Brazil and Terre Haute, Ind., to Chicago subsequently disposed of in No. 17000, Part 6, *Iron and steel Articles*, 155 I. C. C. 517, 581.

3 Excepting brick and articles taking the same rates, including common brick.

the other, and to and from points adjacent to the district on carload traffic on which Chicago rates apply. These so-called compromise rates were suspended in I. and S. No. 2900, *Switching Rates Between Points in Chicago and Chicago Heights Districts.*

Thereupon, in view of the limited record which could be developed under the issues presented in the suspension proceeding, on our own motion we entered upon the instant proceeding, No. 19610, of inquiry and investigation into and concerning the lawfulness of all rates and charges for the switching within the Chicago switching district of all carload traffic moving in interstate commerce, and their relation to like rates and charges for switching in intrastate commerce, with a view to prescribing such reasonable, proper, nondiscriminatory, nonprejudicial, and otherwise lawful switching rates for said traffic as the facts and circumstances may appear to warrant. No. 2900 was consolidated with No. 19610 and the suspension date in the former case was subsequently voluntarily postponed until February 1, 1932.

Rates herein are stated in cents per 100 pounds, unless otherwise noted.

NO. 20006

By complaint filed August 26, 1927, the Illinois Slag & Ballast Company alleges that the rates charged for the transportation of crushed slag, in carloads, from its plant in South Chicago (Irondale), Ill., to points in the Chicago, Ill.-Gary, Ind., district are unjust and unreasonable. Reparation and reasonable rates for the future are sought. A similar complaint was filed with the Illinois Commerce Commission attacking the intrastate rates in the State of Illinois.

The case was consolidated and set for hearing with the general investigation. At the hearing a motion was made by complainant to dismiss without prejudice in so far as the complaint asks rates different on crushed slag than on crushed stone and gravel within the district. Complainant explained that the primary purpose for filing the complaint was to seek different rates on crushed slag than on crushed stone and gravel, and this issue since having been adjudicated he asked that it be dismissed. In *Chicago Gravel Co. v. A., T. & S. F. Ry. Co.*, 146 I. C. C. 290, decided July 3, 1928, at pages 291 and 292, we said:

> Slag undoubtedly competes with gravel and crushed stone. It has substantially the same average loading, moves in the same kind of equipment, and is given the same line-haul and terminal service. In *Penn Sand & Gravel Prod. Asso. v. B. & O. R. R. Co.*, 104 I. C. C. 717, we said:
>
> "Generally speaking, there is no transportation reason why the rates on sand and gravel should be higher than the rates on slag or crushed stone. In most territories, and in the States, they are given the same rates, and where we

have prescribed scales in any territory on all of them they have been rated the same."

In *Rates on Chert, Clay, Sand, and Gravel*, 122 I. C. C. 133, we prescribed a uniform scale of rates on sand, gravel, crushed stone, and slag requiring certain of the rates on gravel to be made the same as those on slag under a finding of undue prejudice.

In the latter case we found that any lower rates on slag than applied on sand, gravel, and crushed stone would be in contravention of section 3 of the act. No further testimony was offered with respect to this issue. Complainant further stated that "the position of the Illinois Slag & Ballast Company is identical with the position of the crushed stone operators within the Chicago district." The evidence in regard to crushed stone, sand, and gravel will be hereinafter discussed. Furthermore, No. 2900 and No. 20006 involve not only switching rates within the district, but also closely related line-haul rates on interstate traffic moving between points adjacent to the district and between certain of those points and points within the district. The general investigation having been restricted to rates covering switching movements, no testimony was presented with respect to line-haul rates. Therefore, line-haul rates will not be considered or further discussed herein, other than to say that the carriers should give consideration to a realignment of such related rates in harmony with the findings hereinafter made with respect to switching rates. The complaint in No. 20006 will be dismissed.

Illinois Commerce Commission Dockets Nos. 17513, 17250, and 71269, and Public Service Commission of Indiana Cause No. 8939, involving the intrastate switching rates on some of the commodities within those respective States, were heard with the general investigation. Representatives of the Illinois Commerce Commission and the Public Service Commission of Indiana cooperated in the supervisory field work entailed, as well as in the conduct of the hearings and the oral argument. This cooperation has been of substantial aid in the development of the record herein. Their views differ in some respects from the conclusions herein expressed.

CHICAGO SWITCHING DISTRICT

The boundaries of the Chicago district as defined in Agent Galligan's tariff I. C. C. No. 98[4] are described in Appendix A hereto. The district is approximately 40 miles in length and from 7 to 15 miles wide, and is densely populated. It covers an area larger than any other switching district in the country, comprising over 600 square miles, and is served by 35 railroads, which maintain a network

[4] Also in Illinois Commerce Commission tariff No. 43 and Indiana Public Service Commission No. 18.

of more than 5,000 miles of track within the boundaries of the district serving over 4,000 private industries. The Manufacturers' Association of Chicago Heights urges that the boundaries of the district be extended to include Chicago Heights, a point approximately 8 miles beyond the southern boundary of the district, now generally taking the Chicago district rates, or, in the event the district is not extended, it urges that the present competitive rate relationship be maintained. The city of Chicago Heights took no part in the hearings, but its counsel filed exceptions to the proposed report and also appeared at the oral argument. The Chicago & Eastern Illinois Railroad, which serves Chicago Heights, also contends for the inclusion of this industrial center within the switching limits. This feature will be hereinafter further discussed.

HISTORY OF SWITCHING RATES WITHIN THE DISTRICT

Prior to August 1, 1911, the rates, charges, and practices of the carriers covering switching services within the district were in a chaotic condition. Individual tariffs were then published by each carrier naming rates local to its line and based upon its own local conditions. No joint rates were in effect. During 1910 a joint committee was organized composed of shippers and carriers with the object of establishing some uniformity in the local switching rates. After many conferences various differences were harmonized and an agreement was entered into, since known as the Lowrey agreement, which was translated into an all-commodity tariff, effective August 1, 1911, establishing uniform individual and joint rates on all commodities with a few exceptions, such as coal, coke, and grain. The exception as to coal and coke was removed in June, 1927. The so-called all-commodity rates published under the Lowrey agreement were 1.5 cents for 1-line and 2-line hauls, and not to exceed 0.5 cent for each additional line haul, minimum 60,000 pounds. Due to the general increases and reduction in rates since 1911 the present all-commodity rates are 2.5 cents for 1-line and 2-line hauls, and 3 cents for 3-or-more-line hauls, as compared with the proposed rates of 3, 3.5, and 4 cents, respectively, minimum 60,000 pounds.

Some of the carriers conceded that exceptions to the proposed all-commodity basis should be made in the case of waste materials, such as slag, cinders, quarry, strippings, etc., without commercial value, the accumulation of which at industries impedes the operation of the plant and is generally regarded as a nuisance. In addition to the foregoing the Chicago & Illinois Western desires to make an exception of tar products, due, as alleged, to the imminent loss of the traffic if any increase is made in the present rates. The shippers

generally favor an all-commodity basis, but most of them are opposed to any increases in their present rates.

COST STUDY

Originally, as appears from the foregoing, the carriers endeavored to realign the rates on iron and steel articles only. We thereupon, by notice of October 25, 1926, requested that they prepare and submit statistics relating to the shortest, longest, and average hauls on iron and steel articles within the district, to be accompanied by detailed cost data. The information called for is set forth in Appendix B. The request was later changed to include all commodities embraced in the 69 classes provided for in the carriers' annual reports to the commission. Pursuant thereto the required statistics were compiled on 42,666 cars moved in September, 1926.

Fifteen of the carriers operating within and adjacent to the Chicago switching district and between that district and Chicago Heights collaborated in a joint cost study of the switching movements originating and terminating within its boundaries. This study was introduced upon our request without restrictions as to the specific carriers to be included. The study was based upon the Coverston-Saur formula, briefly described hereinafter, and embraced seven trunk lines and eight switching and terminal roads, hereinafter collectively called the study roads, as follows:

Trunk lines

Chicago, Burlington & Quincy Railroad
Chicago & North Western Railway
Chicago, Milwaukee, St. Paul & Pacific Railroad
Chicago, Rock Island&Pacific Railway
Elgin, Joliet & Eastern Railway
Illinois Central Railroad
Pennsylvania Railroad

Switching and terminal companies

Baltimore & Ohio Chicago Terminal Railroad
Belt Railway of Chicago
Indiana Harbor Belt Railroad
Chicago & Illinois Western Railroad
Chicago Short Line Railway
Chicago, West Pullman & Southern Railroad
Illinois Northern Railway
Pullman Railroad

The study covers carload movements only, and segregates the expenses incurred thereon into three general classes, namely, clerical, switching, and car detention or maintenance. Taxes and return on investment are provided for by the employment of an estimated ratio, referred to as an operating ratio and used as a divisor to expand the determined costs so as to embrace those elements.

Clerical.—This expense represents the cost incurred to prepare records at the point of origin and destination. It embraces the direct expense as well as an apportioned amount of superintendence, maintenance, and general expenses. The total clerical cost at each ter-

minal is reduced to a unit cost per consignment which is assigned to each car moving in or out of the respective terminal.

Switching.—This expense, concisely, is the cost of all services required in the physical movement of a car, inclusive of an apportioned amount of superintendence, maintenance, traffic, and general expense. The total switching expense is reduced to an engine-hour basis and ultimately to the cost per unit of production, the denominator being the number of cars handled in an hour by an engine while performing a distinctive part of the whole movement. These distinctive parts make up the switching service as a whole, and are designated "elements of service." All cars moving over a certain route normally receive the same elements of service peculiar to that route. The total cost per car of all elements of service embraced in a given route are combined under an index number. The respective index cost is then assigned to each car moving over the same route.

Car detention.—This expense embraces the maintenance of freight-train cars inclusive of an apportioned amount of superintendence, maintenance, and general expenses. The total car-detention expense is reduced to the cost per serviceable-car day, which is applied to each car for every day that it is in switching service.

Operating ratio.—The cost-study formula uses an operating ratio of 66.67 per cent, which approximates the ratio of 67.4 said by the carriers to be necessary for the railroads of the country to earn 5.75 per cent upon their investments as a whole. The carriers herein contend for a ratio lower than 66.67 per cent, whereas the shippers contend for a higher ratio.

While the above formula has been the basis of cost studies presented in previous switching cases, its application in these proceedings apparently is the most elaborate and comprehensive to date. The study was extended to each one of the 69 commodity classes for one, two, and three line hauls segregated between interstate, intrastate Illinois, and intrastate Indiana. The test periods within which the unit costs were determined were confined to one week on each of the 15 roads during June, August, and October, 1927. The unit costs so determined were then applied to 26,166 cars, or 61.33 per cent of those embraced in the traffic analysis as of September, 1926, this number having moved wholly over the study roads during that month. These cars are hereinafter referred to as study cars in contradistinction to those not included in the study, and which are designated as nonstudy cars. The foregoing also applies to 638 additional study cars which moved wholly over the study roads between Chicago Heights and the district during September, 1926.

The following tables, prepared from the carriers' exhibits, show the total traffic inclusive of study and nonstudy cars, segregated as above described except as to commodities:

Study and nonstudy cars	Interstate Cars	Interstate Per cent	Intrastate, Illinois Cars	Intrastate, Illinois Per cent	Intrastate, Indiana Cars	Intrastate, Indiana Per cent	Total Cars	Total Per cent
Chicago switching district:								
One-line haul—								
Study	7,573	17.75	1,951	4.57	2,426	5.69	11,950	28.01
Nonstudy	595	1.39	7,017	16.45	134	.31	7,746	18.15
Total	8,168	19.14	8,968	21.02	2,560	6.00	19,696	46.16
Two-line haul—								
Study	5,472	12.82	5,853	13.72	158	.37	11,483	26.91
Nonstudy	1,958	4.59	4,257	9.98	11	.03	6,226	14.60
Total	7,430	17.41	10,110	23.70	169	.40	17,709	41.51
Three-line haul—								
Study	803	1.89	1,930	4.52	....	...	2,733	6.41
Nonstudy	793	1.85	1,735	4.07	....	...	2,528	5.92
Total	1,596	3.74	3,665	8.59	....	...	5,261	12.33
Total (study)	13,848	32.45	9,734	22.82	2,584	6.06	[1] 26,166	61.33
Total (nonstudy)	3,346	7.84	13,009	30.49	145	.34	[2] 16,500	38.67
Grand total	17,194	40.29	22,743	53.31	2,729	6.40	42,666	100.00
Between Chicago switching district and Chicago Heights:								
Two-line haul—								
Study	38	2.94	354	27.41	....	...	392	30.35
Nonstudy	56	4.33	338	26.16	....	...	394	30.49
Total	94	7.27	692	53.57	....	...	786	60.84
Three-line haul—								
Study	135	10.44	87	6.74	....	...	222	17.18
Nonstudy	79	6.12	156	12.07	....	...	235	18.19
Total	214	16.56	243	18.81	....	...	457	35.37
Four-line haul—								
Study	6	.46	18	1.39	....	...	24	1.85
Nonstudy	0	.00	25	1.94	....	...	25	1.94
Total	6	.46	43	3.33	....	...	49	3.79
Total (study)	179	13.84	459	35.54	....	...	638	49.38
Total (nonstudy)	135	10.45	519	40.17	....	...	654	50.62
Grand total	314	24.29	978	75.71	....	...	1,292	100.00

[1] Fifteen study roads.

[2] Fifteen nonstudy roads.

The average costs, hauls, and loading, as compiled by the carriers, based upon the study cars and shown in their exhibits are as follows:

Switching costs	Cars	Average haul per car	Average loading per car	Average operating expense		Average total cost based on operating ratio of 66.67 per cent	
				Per car	Per 100 pounds	Per car	Per 100 pounds
Between points in Chicago switching district:		*Miles*	*Pounds*		*Cents*		*Cents*
One line	11,950	13.19	86,250	$15.94	1.9	$23.92	2.8
Two line	11,483	21.32	84,145	18.92	2.2	28.39	3.4
Three line	2,733	26.53	85,405	21.52	2.5	32.29	3.8
Between points in Chicago and Chicago Heights districts: [1]							
Two line	392	31.66	75,171	18.77	2.5	28.15	3.8
Three line	222	33.42	74,416	21.62	2.9	32.42	4.4
Four line	24	41.94	84,994	21.57	2.5	32.35	3.8

[1] No one-line hauls involved. In the record the movement over the Chicago Heights Terminal Transfer Railway and the Chicago & Eastern Illinois Railway was dealt with as a one-line movement and for the purpose of this case will be so considered.

Cost studies of this nature may be considered as indicative only. In this case the exactness of the cost figures has been questioned alike by the carriers, which had the burden of compiling them, and by the shippers who made an extensive analysis of them. The effect of the criticisms of the carriers would be to increase the costs as originally determined, and those of the shippers would have the opposite effect.

The most important criticisms of the carriers may be summarized as follows:

1. The studies were made during the summer and fall periods without allowance being made for the increased costs incurred during the winter months. This is based upon an alleged check indicating that less cars were handled and more fuel consumed per month during December, January, and February than in any of the other nine months of the respective years 1925, 1926, and 1927. The costs were thereby understated approximately 10 per cent, according to the carriers' estimate.

2. The cost figures reflect the level of wages in 1927. Later increases granted and pending have not been included.

3. No allowance was included by the trunk-line study roads for the transportation of locomotive fuel over the respective roads' own lines or by the three large belt lines for distributing coal to their respective fuel stations.

4. No part of the maintenance expense of main tracks to cover their use in the switching service was included in the switching costs.

5. Costs borne by the intermediate and the terminating roads for the return of empty cars were omitted.

6. The operating ratio of 66.67 per cent, although suggested in the Coverston-Saur formula, is objected to by the carriers as being too high.

On the other hand the shippers point to other infirmities, both as to the theory and the application of the carriers' formula, of which the following are considered the most important, and would tend to lower the costs:

1. On the basis of the serviceable-car day detention, a portion of the maintenance expenses of freight-train cars, or so-called car detention, was allocated to the cost of switching. The shippers' primary objection to this is that the use of the serviceable-car day as a proper basis for this apportionment is erroneous because it comprehends only a time factor, no consideration being given to wear and tear from use as measured by mileage. This is on the ground that repairs, the most important item of maintenance, result principally from damage done when a car is in motion and not

while standing still. The shippers also point out that the responsibility for empty movements as between road and switching services has not been carefully observed, resulting in both over and understatements in the costs, and that it is erroneous to include private cars in the computation of the unit cost per car-day for maintenance, inasmuch as the carriers perform only running repairs on private cars except in case of accident.

2. Failure to determine the distinct engine-hour cost for switching and weighing cars at industries because of the use of lighter engines in those services attended by lower engine-hour costs and because that service is performed on tracks owned and maintained by the industries in most instances.

3. The determination of unit costs based upon movements during a test period of one week in 1927 on each respective carrier and the application of those unit costs to traffic materially different in volume in another period or during September, 1926, tends to distort the final results.

4. Failure to reduce the cost by demurrage and weighing charges collected results in an overstatement of the cost as a basis for a distinct transportation rate where as here the expenses attached to those services are included in the cost.

5. Inclusion of the Elgin, Joliet & Eastern hereinafter referred to as the E., J. & E., as a study road operating principally outside of the Chicago district tended to inflate the results of the study which should have been confined strictly to roads within that district.

6. That the operating ratio of 66.67 per cent, as suggested by the formula, is too low.

7. General criticism was made of the carriers' operating methods and the surrounding conditions as affecting the costs. These relate to circuity of movements, operating methods and restrictions at interchange points, lack of trackage rights to facilitate hauls; and failure to perform joint switching in some instances where two or more carriers serve the same plant.

Representatives of the Illinois Commerce Commission submitted testimony to show that the costs as compiled by the carriers are overstated due to the inclusion of time prior to the actual assignment of cars to a particular switching movement, and also subsequent to their release and the lapse of sufficient time to return cars to a carrier's yard. They also agree with the shippers' contention that the costs should have been reduced by the amount of demurrage collected.

Other less important criticisms were made, but it is not deemed necessary to discuss them in detail.

The following table summarizes and compares the results of the cost study revised to the basis of the respective claims of the carriers and shippers:

	1,950 cars, one-line		11,483 cars, two-line		2,733 cars, three-line	
	Carriers	Shippers	Carriers	Shippers	Carriers	Shippers
Operating expenses (study)	$190,552	$190,552	$217,317	$217,317	$58,829	$58,829
Net undercharge	$8,531	.....	$12,255	.....	$8,093	.....
Net overcharge	.....	$31,653	.....	$33,042	.....	$7,412
Revised operating expenses	$199,083	$158,899	$229,572	$184,275	$66,922	$51,417
Operating expenses per car	$16.66	$13.30	$19.99	$16.05	$24.49	$18.81
Operating expenses per 100 pounds...cents	1.93	1.54	2.38	1.91	2.87	2.20
Total cost per car:						
Based on operating ratio, 56.67 per cent	$24.99	$19.94	$29.99	$24.07	$36.73	$28.22
Based on operating ratio, 76.80 per cent	$21.69	$17.31	$26.03	$20.90	$31.88	$24.50
Total cost per 100 pounds:						
Based on operating ratio, 66.67 per cent .....cents	2.90	2.31	3.56	2.86	4.30	3.30
Based on operating ratio, 76.80 per cent .....cents	2.52	2.01	3.09	2.48	3.73	2.87

The above differences in results are attributable, in the main, to the disagreement between shippers and carriers as to the theory and the application of the carriers' cost formula relative to the allocation of the maintenance of cars (car detention); the inflation of averages for the study period of September, 1926, by the carriers' application of higher element-of-service costs developed on specific movements of relatively low volume during the test period, limited to one week in 1927, to the same elements of service performed on similar movements of greater volume during September, 1926, without a compensating movement of higher volume in the latter period at the lower test period costs developed on other elements of service; the carriers' failure to develop distinct costs for industrial switching, weighing, etc., because of lighter engines which it is alleged are employed with less expense than in other switching service; and the variation between the operating ratio of 76.8 per cent proposed by the shippers and the operating ratio of 66.67 per cent suggested by the formula and considered as maximum by the carriers. Further discussion of the cost study herein will be confined to the above features.

As to car detention which embraces the combined expenses of car repairs, depreciation, and retirements, the parties admitted that there has been no precise or even satisfactory basis yet developed for allocating that expense to particular services.

The car-maintenance expenses are not segregated in the carriers' accounts between road service and yard service, and there are no means of arriving at the amount of these expenses chargeable to a particular service, such as that here involved except upon the basis

of an estimate. The carriers' method of estimating these expenses, which rests upon definitely ascertainable facts, is to divide the total amount of the car-maintenance expenses on the entire road during the year by the total serviceable-car days of the cars in all services, to obtain an average car-maintenance expense per serviceable-car day, which is then applied to the number of days the cars are detained in intradistrict switching service, as the basis for arriving at the amount of the maintenance expense chargeable to the cars in that service. This is a strictly time factor.

The shippers, as well as representatives of the Illinois commission, criticized the carriers' method on the ground that it makes the amount of these expenses directly proportionate to the number of days involved, whereas it is claimed that these expenses accrue partly on a time basis and partly on a use basis. They inject the factor of 65 per cent as representative of use and which they obtained from the American Railway Engineering Association bulletin for March, 1923. They apply that factor to the expense of car repairs after adding an apportioned part of the other maintenance accounts and arrive at an amount which they attribute to use and which is then reduced to an amount per car-mile. The switching service is then charged with the amount per car-mile determined by use of constructive car-miles within the district based upon estimates of 20, 40, and 50 miles for one, two and three line hauls, respectively. In addition to the foregoing the shippers approximate and add for damage to cars within the district the amounts of 15, 30 and 45 cents per car for one, two, and three line hauls, respectively. Under the shippers' method the car detention costs as determined by the carriers would be reduced $21,167, $19,536, and $5,005 for one, two, and three line hauls, respectively.

The carriers assert that the shippers' formula fails to provide for the necessary detention of an unassigned supply of cars within the district to meet the varying demand from day to day; however, the carriers also contend that their study does not fully provide for that expense, and claim that the costs as originally calculated are understated thereby. An examination of the formula relied upon by the shippers for their distribution of the expense for car detention as between use and nonuse discloses that the factor of 65 per cent referred to above is the result of a study made more than 10 years ago, during 1915, 1916, and 1917, and furthermore it does not appear to have had any particular relation to the locality under consideration or to any terminal or switching service. The shippers also uniformly applied the factor of 65 per cent to the expense for car repairs increased by proportions of other indirect expenses to arrive

at the amount attributable to use. The original formula which they adopted attributes 65 per cent to use in relation to the direct expense of car repairs only. It assigns as low as 10 per cent to use for certain other accounts included by the shippers and the entire amount of other accounts to nonuse, all of which were apportioned 65 per cent to use by the shippers. The cost of 64.352 cents per car-day for detention is based upon serviceable car days only under the carriers' formula. In reducing to a mileage basis the 65 per cent portion of that cost the shippers use 30 miles per day, which represents the average road mileage only of total serviceable and unserviceable cars, home and foreign, on the lines of all Class I railroads during the year 1926, excluding switching and terminal carriers.

It is obvious that the bases employed by the shippers in both segregating and assigning a portion of car-detention cost to use are either too remote or too abstractive to produce any more convincing results than those of the carriers. The basis of 30 car-miles per day in a terminal is constructed solely upon basis of road mileage and bears no relation to the use of equipment in terminals. It should not be accepted as an equitable measure of the cost of car detention for the service under consideration. While, on the other hand, the shippers question the accuracy of the results obtained by the carriers through the employment of a purely time factor, it would appear from this record that time is the only common denominator between road and terminal services.

Intradistrict switching is a complete service in and of itself, having no relation to any road-haul movement. The car must be furnished by the switching carrier when required for this service. If the particular switching carrier has no car of its own, it must provide one of foreign ownership, but there is no per diem reclaim in connection with this class of switching service. When called for, the empty car must be taken by the switching carrier from its own yard or the foreign line connection and spotted at the originating industry for loading. When loaded it must be moved through the terminal and spotted at the destination industry, and when unloaded the empty car must be returned to the storage yard or to the foreign line connection. The use of the car in this service, therefore, doubtless is greater than the use in any other class of switching service, involving, as it does, both loaded and empty movements and two complete terminal services.

The shippers criticized the carriers' study relative to weighing and industry switching services on the grounds that separate engine-hour costs were not developed for those distinct services. To some degree those services involve the use of lighter engines attended with less operating cost than the heavier engines in other switching services:

In the case of industry switching the service is performed not only with lighter engines but to some extent upon property owned and maintained by the respective industry. The shippers are in agreement with the carriers, however, that there is no adopted practice of assigning only the lighter engines to industry switching and weighing, and that the heavier engines also perform those services. The carriers assert that, where practicable, separate engine-hour costs were developed as to locality, but not upon the basis of elements of service, due to the fact that no particular element of service is confined to a specific type of engine. It is apparent, therefore, that it would be impracticable, if not impossible, to make such a refinement. Neither does it seem practicable to segregate engine-hours between performance on carrier property and on industry property.

The shippers in support of their criticism pursued a method of segregation by which they developed alleged overcharges of 79 cents per car inclusive of the E., J. & E. and $1.03 per car exclusive of that road. No attempt will be made to explain the detail of that method, except to say that it converts the averages per engine-hour developed by the carriers for all switching, intradistrict and other, for the 15 respective study roads into common general averages for the respective elements of service embraced in the switching operation, inclusive of weighing and the industrial switching. An estimate of $10 per engine-hour was then arbitrarily assigned alike to weighing and to industrial switching in substitution of averages of $14.15 and $14.79, respectively, developed by the carriers. The resultant decrease in those two services was allocated to the various other switching services proratably, and the percentages of the increases and the decreases thus occurring in the repective services were computed. The shippers then set up the cost of intradistrict switching only, classified into its various elements. By this segregation the relationship of the various items changed, which prevented the decrease in weighing and industry switching from being wholly absorbed by the other items to which the decrease was assignable on basis of the percentages obtained as above explained. The shippers' premise is questionable, due not only to their application of the estimate of $10 per engine hour to all weighing and industry switching, but also to the fact that they fail to classify those services with reference to the type of engine used or whether performed upon carrier or industry property, which the shippers contend is the alleged disability in the carriers' study.

The evidence is far from convincing in regard to the operating ratio required to expand the operating costs so as to embrace taxes and return on investment. The carriers' study is vague in this

respect. They fail to name any definite figure which would bear a distinct relationship to the carriers and the particular traffic under consideration. They make certain compilations which embraced the railroads of the country as a whole, and arrived at an operating ratio of 67.4 per cent, which they say would produce a return of 5.75 per cent upon investment. The ratio of 67.4 per cent approximates the ratio of 66.67 per cent suggested in the Coverston-Saur formula, which they contend is too high, but, as stated, they name no definite lower figure. As indicated, 67.4 per cent represents a composite ratio embracing the railroads of the country as a whole. It reflects the diversity of earning power of the numerous investments affected by favorable and unfavorable operating conditions, location, and tax requirements throughout the country. The carriers claim that a ratio lower than 66.67 per cent would be required to be representative of the conditions which obtain in the instant case restricted, as it is, to the confines of a single congested terminal in and around Chicago, one of the greatest of industrial centers, with high taxes due to high land values, and difficult operating conditions due to congestion."

The shippers in support of their contention that the ratio of 66.67 per cent is too low showed that with an average operating ratio of 70.24 per cent the average return for nine switching roads in the district for the years 1925, 1926, and 1927 was 6.36 per cent based upon investment, and 8.33 per cent based upon our tentative valuation as to eight and the final valuation as to one of those roads. It is also shown that approximately 40 per cent of the strictly intradistrict switching expenses and 15 per cent of all switching expenses within the district is attributable to industry switching which is performed to some degree upon industry property. The purpose of this showing is to indicate that with regard to such portion of the switching as is performed on property owned by industries, an operating ratio should not comprehend either taxes or return on investment. In view of the foregoing the shippers claim that the average operating ratio of 70.24 per cent above described might well be increased to 72 per cent to earn 5.75 per cent on investment and 76.8 per cent to earn 5.75 per cent on the tentative valuation. The ratio of 70.24 per cent comprehends all operations of the nine roads embraced in the shippers' exhibit, whereas the intradistrict switching amounts to only about 5 per cent of the total operations. In other words, the intradistrict switching constitutes somewhat less than 5 per cent of all switching, but is largely made up of industrial switching, which admittedly is the most expensive of the switching services, and the ratio of 70.24 per cent does not reflect the results of performing intradistrict switching because it is largely influenced

by other less costly switching operations. The returns of 6.36 per cent on investment and 8.33 per cent on our valuation also include, in some measure, the results from the joint use of the facilities of terminal carriers by tenant companies accounted for in the joint-facility accounts. Those accounts have no place in the cost-finding data as compiled in these proceedings. They are merely cross-entries between carriers and do not affect the actual cost of handling traffic from a cost-finding standpoint. They do, however, enter into the accounts so as to affect a composite operating ratio designed to show the results of operating a particular property under all of the peculiar conditions of operation local to that property. If the property is used extensively by other lines and the accounts contain large net credits for rents and for operating expenses, as is the case in respect of the jointly owned and operated companies included by the shippers in their illustration, then those credits are in a large measure occasioned by terminal operations under arrangements bearing no relation to the intradistrict switching. Neither the operating ratio nor the returns on investment so arrived at are indices of the compensatory character of the rates on the distinct or segregated part of the traffic which is involved in these proceedings.

If full effect were given to the modifications submitted by both carriers and shippers, the net decrease in the originally submitted costs would be 2.2 mills per 100 pounds for the average one-line haul of 13.19 miles, 2.2 mills for the average two-line haul of 21.32 miles, and an increase of 0.3 mill per 100 pounds for the average three-line haul of 26.53 miles. Those modifications depend principally upon the correctness of the theory and application of the formula used to ascertain the car-detention costs. This leads to a comparison of those approximate costs with the revenue produced by the present and the proposed rates, respectively.

REVENUE

As previously stated, the present Lowrey rates are 2.5, 2.5, and 3 cents for one, two, and three-or-more-line hauls, and the rates proposed are 3, 3.5, and 4 cents for the same respective hauls. Those rates, however, lose their significance in certain instances due to extensive movements on exceptions either over or under the standard Lowrey basis. This is indicated by an examination of the weighted-average revenues shown in the following summarized table compiled from the carriers' exhibits. Those exhibits reflect the results of an extensive analysis of traffic by classes of commodities, moved on the 15 study roads during September, 1926, in cars covered by the cost study as well as in nonstudy cars.

Average revenue, study and nonstudy cars

Basis		One-line			Two-line			Three-line		
Present	Proposed	Tons	Revenue per 100 pounds		Tons	Revenue per 100 pounds		Tons	Revenue per 100 pounds	
			Present	Proposed		Present	Proposed		Present	Proposed
Interstate:	Interstate:		*Cents*	*Cents*		*Cents*	*Cents*		*Cents*	*Cents*
Lowrey	Lowrey	63,605	2.5	3.0	200,313	2.5	3.5	12,611	3.0	4.0
Over Lowrey	Over Lowrey	21,670	3.8	3.9	63,813	4.8	5.0	54,974	5.4	5.4
Over Lowrey	Lowrey	214,303	2.9	3.0	.....	..	..	.....	..	..
Under Lowrey	Lowrey	14,715	1.8	3.0	26,199	1.4	3.5	200	2.0	4.0
Under Lowrey	Under Lowrey	33,425	1.5	2.4	12,343	2.2	2.2	4,605	2.6	3.1
	Total	347,718	2.7	3.0	302,668	2.9	3.8	72,390	4.8	5.0
Intrastate, Illinois:	Intrastate, Illinois:									
Lowrey	Lowrey	57,793	2.5	3.0	320,735	2.5	3.5	63,012	3.0	4.0
Over	Over	2,461	3.3	3.6	23,638	3.6	4.2	15,508	4.2	4.7
Over	Lowrey	725	3.0	3.0	2,421	3.3	3.5	.....	..	..
Under	Lowrey	104,140	1.7	3.0	59,695	1.3	3.5	17,333	2.6	4.0
Under	Under	190,120	0.9	1.0	4,434	1.6	2.3	56,675	2.4	3.5
	Total	355,239	1.4	1.9	410,923	2.4	3.5	152,528	2.9	3.9
Intrastate, Indiana:	Intrastate, Indiana:									
Lowrey	Lowrey	16,073	2.5	3.0	2,760	2.5	3.5	.....	..	..
Over	Over	3,757	5.0	5.0	4,731	5.2	5.2	.....	..	..
Over	Lowery	67,053	2.9	3.0	.....	..	..	.....	..	..
Under	Lowery	20,166	1.8	3.0	.....	..	..	.....	..	..
Under	Under	956	1.1	1.2	.....	..	..	.....	..	..
	Total	108,005	2.6	3.1	7,491	4.2	4.6	.....	..	..
	Grand total	810,962	2.1	2.5	721,082	2.6	3.6	224,918	3.5	4.2
Lowrey rates compared		.....	2.5	3.0	.....	2.5	3.5	.....	3.0	4.0

The weighted-average revenue, hereinafter referred to as revenue, on the present basis is 2.1, 2.6, and 3.5 cents, as compared with the corresponding Lowrey rates of 2.5, 2.5, and 3 for one, two, and three-or-more line hauls, respectively. On the proposed basis for the same traffic the revenue would have been 2.5, 3.6, and 4.2 cents as compared with the proposed Lowrey rates of 3, 3.5, and 4 cents, respectively. It will be observed that when all the traffic is considered, the amount of increase on the one-line and three-line hauls are in fact less than indicated by the proposed changes in the Lowrey rates. While both interstate and intrastate traffic contribute to this deficiency, the principal factors are the conditions which surround the 1-line hauls within Illinois. This is manifest by the comparatively large amount of tonnage that now moves and would move in 1-line hauls intrastate in Illinois on exceptions under the Lowrey rates. As to the 3-line movement, the excess revenue over the present Lowrey rate is undoubtedly attributable to the 3-line interstate traffic which originated on the E., J. & E. and to some extent outside of the district. That carrier is not a party to the Lowrey basis. It publishes only line-haul rates somewhat higher than the Lowrey basis.

The total traffic included in the above table amounted to 1,756,962 tons. Of that tonnage, 41.94 per cent moved on Lowrey rates, 27.04 per cent over, and 31.02 per cent under those rates. If the proposed basis had been in effect 71.93 per cent thereof would have moved on the Lowrey rates, 10.85 per cent over, and 17.22 per cent under those rates. Due to the elimination of a part of the exceptions, both over and under the Lowrey basis, there would be a substantial increase in the volume of movement on the strictly Lowrey rates, but no increase in the weighted-average revenues.

REVENUES COMPARED WITH COSTS

Manifestly the standard rates, present or proposed, are not true indices of the revenues for the purpose of comparing unit costs. The unit costs being based upon averages of the actual cost of the whole operation should be compared with like averages of the actual revenue received on basis of the standard rates as modified by exceptions to those rates.

The weighted-average revenue as shown in the foregoing table is subject to further reduction due to the inclusion therein of revenue derived from traffic moving over the E. J. & E. within, and to and from the district at rates above the Lowrey basis. While the record does not definitely indicate, it may be assumed with reasonable certainty that the interstate and the intrastate Indiana movements on rates over both the present and proposed Lowrey basis consist of

traffic over that road. If that traffic were eliminated it may fairly be assumed that the weighted-average revenues at the proposed Lowrey rates of 3, 3.5, and 4 cents for one, two, and three-or-more line hauls, respectively, would be somewhat reduced. On the other hand, the record does not indicate that the inclusion of the E., J. & E. has inflated the unit costs, and in fact one of the exhibits filed by the shippers indicates that the engine-hour costs are lower with that carrier included than if it is excluded. By use of those unit costs the following comparison is made with the present and proposed rates and weighted-average revenues:

	Present				Proposed				
	Rate	Weighted average revenue	Operating expense	Ratio, operating expense to weighted average revenue	Rate	Weighted average revenue	Operating expense	Ratio, operating expense to weighted average revenue	Total cost based on 70 per cent ratio
	Cents	*Cents*	*Cents*	*Per cent*	*Cents*	*Cents*	*Cents*	*Per cent*	*Cents*
One line	2.5	2.04	1.9	93.14	3.0	2.45	1.9	77.55	2.71
Two line	2.5	2.37	2.2	92.83	3.5	3.45	2.2	63.77	3.14
Three line	3.0	2.89	2.5	86.51	4.0	3.81	2.5	65.62	3.57
Average (not weighted)	..	...	..	90.83	..	...	..	68.98	...

It is quite evident from the high ratios of operating expenses to the revenues that the present rates are too low. The record contains no suggestions of operating ratios that approach as high as 86.51 per cent, which is the lowest ratio indicated above at the present rates. The highest ratios suggested by the shippers range from 72.20 to 76.80 per cent, and the highest suggested by the carriers is 66.67 per cent. Under the proposed rates the ratios of operating expenses to the weighted-average revenues would be 77.55, 63.77, and 65.62 for the one, two, and three-or-more line hauls, respectively. If the total costs were uniformly based upon an operating ratio of 70 per cent, which is midway between those contended for by the carriers and shippers, the productivity of the rates as represented by weighted-average revenue would be 2.71, 3.14, and 3.57 for the respective hauls. Therefore, if applied to all the traffic proportionately, it would require rates of 3.31, 3.18, and 3.74 cents, respectively, to produce those weighted-average revenues. It thus appears that, notwithstanding the general desire for a uniform rate basis and the extent to which that basis is observed untrammeled by distance within an area as large as the Chicago switching district, there is a considerable tonnage that moves, and which probably would continue to move, on exceptions lower than the uniform rate

basis. The influence of the comparatively large movement taking the Lowrey rates is seen in the constructed 1-line rate of 3.31 cents, which is 0.31 cent over the proposed rate of 3 cents. It is apparent that those movements at the lower rates make serious inroads on the carrier's revenues.

The record herein contains no convincing evidence as to what may be a proper operating ratio for this intradistrict traffic. As previously stated, the carriers' formula suggests a ratio of 66.67 per cent, but their cost expert contended for a lower ratio in view of the much higher tax value of the properties within the switching district, as indicated by the fact that the average tax valuation per mile of road for the trunk lines included in the study is five times greater in Cook County, which embraces the Chicago switching district, than the tax value per mile of road outside of Cook County in the State of Illinois. Neither do the earnings of the nine switching roads referred to by the shippers afford a reliable guide as to what a proper operating ratio may be, for the reason that of the total traffic switched by the study roads 95 per cent is other than intradistrict traffic. In other words, less than 5 per cent of the total traffic switched requires two complete terminal services, as compared with one for road-haul cars originating or terminating within the district, and none for road-haul cars passing through the district. Furthermore, it involves property of greater tax value and very extensive use of that property as indicated by the average hauls of 10.8 miles for one line, 21.6 miles for two line, 24.5 miles for three line, and 18 miles for one, two, and three line hauls combined. Intradistrict switching is a complete service in and of itself, involving no part of a line-haul rate, switching absorptions, or per diem reclaims, and the rate therefor should be fully compensatory. Therefore, in the absence of any evidence of record as to the amount of the taxes and joint-facility rents, and the value of the property used in intradistrict switching, the question of the proper ratio to apply to the ascertained expenses to develop such a rate resolves itself very largely into a matter of opinion.

A detailed analysis of the tonnage handled during the test periods divided as to one, two, and three-or-more line hauls, and for both interstate and intrastate movements, appears in Appendix C hereto.

On argument counsel for the shippers again criticized the various cost items as being excessive, and compared the cost figures with those developed in connection with cost studies undertaken at various other terminals. Counsel further contended that before permitting any increases in the switching rates the carriers should be required to undertake improved methods of handling this switching traffic, such as the elimination of unduly circuitous routes, restricting the points of in-

terchange, and more liberal use of trackage rights, etc. The record leaves no doubt that there is need for improvement in the handling of this vast switching business, and we can not too strongly urge upon the carriers the necessity for prompt study of these conditions looking toward the elimination of unnecessarily circuitous hauls, the proper location of interchange points and classification yards, etc.

COMMODITIES

Much testimony was submitted by various parties interested in the rates on particular commodities with a view to showing that no increases would be justified in their respective rates. Some of the contentions advanced in connection with a number of the commodities moving in large volume are briefly set forth below.

Grain.—Wheat, corn, oats, and other grains move in large part, both interstate and intrastate within Illinois, on exceptions under the Lowrey basis with some movement intrastate in Illinois on Lowrey rates and rates over that basis. It is proposed by the carriers to place grain generally upon the all-commodity basis, which would result in an increase in the grain revenue. Based upon the traffic analysis of September, 1926, the principal grain movement consists of corn in 2-line hauls both interstate and intrastate in Illinois, although there is a substantial intradistrict movement of all grains in one, two, and three-line hauls. This greater movement of corn apparently is attributable to the extensive manufacture of corn products within the district and to the facilities for drying wet corn for market with which the Chicago district is said to be especially well equipped. The latter induce some movement between elevators and the drying plants. The traffic analysis shows no movement of any grain within the Indiana section of the district.

The carriers' proposed adjustment originally did not include the rates on grain, but at the later hearings a general readjustment of these rates to the full all-commodity basis was proposed. All grain rates are published in the tariffs of individual lines, and the carriers in one of their later exhibits show only the rates over the lines specified therein, either between points on the same line or between an industry or team track on the line and a point of interchange with a connecting line. In so far as team tracks are concerned, it was stated by one of the carriers' witnesses that in order to restrict the use of those tracks the Lowrey basis is not observed and that the rates shown between a team track and a connecting line are proportional rates to be added to the connecting-line rate to make the through rate. This leaves the record without any data as to the

present two and three line grain rates from industry to industry upon which to base a conception as to the significance of the proposed change on grain to the all-commodity basis, except what may be gathered from the average revenues derived from the present rates under the Lowrey basis as compared with the proposed rates on the all-commodity basis. The following comparison compiled from that source is nevertheless illuminating:

Hauls	Interstate			Intrastate, Illinois			
	Tons	Average haul	Present average revenue [1]	Tons	Average haul	Present average revenue [1]	Proposed Lowrey rate
		Miles	*Cents*		*Miles*	*Cents*	*Cents*
One line:							
Wheat	....	....	....	3,868	11.52	0.7	3.0
Corn	1,383	13.49	0.7	3,373	12.14	1.3	3.0
Oats	64	10.00	1.0	451	4.95	1.2	3.0
Other grain	259	7.57	2.0	198	2.31	.8	3.0
Two line:							
Wheat	1,568	9.15	1.5	6,813	10.28	1.5	3.5
Corn	17,793	20.59	1.4	44,838	44.20	1.3	3.5
Oats	400	20.50	1.6	5,586	19.15	1.5	3.5
Other grain	160	19.20	1.8	2,005	18.20	1.4	3.5
Other mill products	377	20.05	1.9	451	13.51	1.7	3.5
Three line:							
Wheat	....	....	....	2,604	17.24	2.1	4.0
Corn	160	36.20	1.9	1,526	23.98	1.9	4.0
Oats	40	16.26	2.2	1,361	19.19	2.5	4.0
Other grain	....	....	....	478	26.19	2.3	4.0

[1] Per 100 pounds.

It will be seen that an increase in the present rates on grain to the proposed all-commodity basis would be a very considerable increase, but it also should be stated that the bulk of the grain within the district moves on lower rates than any other commodity except some comparatively short hauls of coke, packing-house products, and refuse material. On argument it was stated that the present rates are generally on a per car basis, varying in amount, but considerably below the Lowrey rates.

The testimony of the shippers concerned the manner of merchandising grain, total amount of available grain-storage facilities around Chicago, the amount of grain in storage on various dates, and the so-called reciprocal and proportional switching charges on inbound and outbound movements at Chicago compared with similar charges in various other switching districts, such as St. Louis and Kansas City, Mo., Minneapolis, Minn., and Omaha, Nebr. The importance of Chicago as a primary grain market is well established and requires no comment. The carriers point out that the compared charges per car in other switching districts brought into the comparison are either so-called reciprocal switching charges which are not in issue, or proportional charges which are incomplete unless combined with

other charges of that class to make the through cross-town charge, and further that the shippers' comparisons are unaccompanied by any showing of similarity of conditions. Only a limited number of the 1-line charges in other districts are exhibited, and these are unaccompanied by any showing of distance, or where distances are shown they involve a very short haul. Due to those infirmities the comparison is of little value.

The principal witness for the grain interests urged that the charges for the intradistrict switching of grain within the Chicago switching district should be absorbed by the carriers, that is, at least to the extent of one intradistrict switching service. This no doubt contemplates a switching service in addition to the service performed in direct connection with the inbound and outbound road haul, and apparently is predicated upon the theory that grain should be considered in transit on a line-haul rate until it reaches its final destination; that all such accessorial services should be considered in the nature of transit arrangements, the ultimate object being to equalize the situation of the consignee in Chicago who buys his grain after a complete delivery has been effected by the inbound carrier with a situation of the consignee who buys his grain so as to receive delivery in direct connection with the inbound road haul; and that the dealer who purchases wet corn should be permitted to accept delivery at one point and thereafter have the corn again transported within the district to a drying plant and returned without additional transportation cost. These propositions were all interlinked by the witness to the equalization of Chicago as a grain market in comparison with other cities classed as such, by stating that an additional charge for a purely intradistrict movement destroys the equalizing effect of the line-haul rate adjustments to and from Chicago as compared with other grain markets. That does not appear to be correct. All dealers or consumers in Chicago have the advantage of the flat Chicago rate inclusive of an initial delivery. They are also upon an equal basis with each other in so far as inbound or outbound transportation is concerned. The need for the additional intradistrict switching service is governed by the manner in which grain is bought and sold in the Chicago market and arises after initial delivery has been effected, or too late to avoid a movement in addition to the initial delivery. Consequently the elimination of the intradistrict charge is a merchandizing rather than a transportation problem, and is controllable largely by the dealers themselves.

The movement of wet corn to and from drying plants also involves a commercial rather than a transportation question. The original

price paid for wet corn generally is sufficiently below that paid for dry corn to provide for the cost of drying, and it may reasonably be assumed that it is known either when wet corn is shipped originally or when it first reaches Chicago that it will undergo a drying process. If initial delivery to an elevator or any place other than a drying plant is then requested, it must be for a commercial and not a transportation reason.

The need of those services is not within the knowledge of the carriers at a time when provision can be made in the line-haul rate to insure remuneration for their performance. Nor has it been shown that the line-haul rates are adequate to compensate the carriers for those additional services. It follows that the intra-district movements should not be considered in the light of transit arrangements nor as so-called reciprocal switching, as suggested by the shippers' witness. They constitute distinct services and justify distinct charges when rendered.

Coke.—This commodity was represented solely by the By-Products Coke Corporation of Chicago, located at South Chicago, Ill., which claims to be the largest producer in the country of coke for the general market. It carbonizes 1,500,000 tons of coal each year, and produces 1,250,000 tons of coke. In addition it owns and operates a blast furnace in South Chicago on the opposite side of the Calumet River from the coke plant. Yard tracks and scales are owned and maintained by the industry at its coke plant. The Chicago Short Line performs the switching at that point.

During the year 1926 the coke plant shipped 28,816 carloads of coke, light oil, ammoniacal liquor, and coal tar, of which 26,948 carloads were coke. The coke was distributed as follows: 5,050 carloads in 1-line hauls less than 1 mile in length; 12,099 carloads in 2-line hauls; and 9,799 carloads in 3-line hauls. The 1-line hauls were made in private cars for which no allowance is made. Of the 2-line hauls 6,120 cars were destined to points outside of the district. The carriers submitted traffic statistics for the month of September, 1926, only which show a total movement within the district of 6,716 cars. Measured by that month there must be a considerable movement of coke in addition to that of the By-Products Corporation. While that company estimated that 90 per cent of its coke moves intrastate, the carriers' statistics indicate that about 58 per cent of the total movement of coke in the district is interstate. These statistics for September, 1926, show that the 1-line hauls range from 1.3 to 11.97 miles, the 2-line hauls from 2 to 56.9 miles, and the 3-line hauls from 8.5 to 37.4 miles. The following table depicts the average distances of

those hauls and the weighted-average revenue at the present and proposed bases of rates:

	Cars	Average distance	Revenue per ton	
			Present	Proposed
Interstate:		*Miles*	*Cents*	*Cents*
One-line	3	[1] 7.00	50	60
Do	3,374	[1] 11.97	60	60
Do	37	[1] 11.97	12	12
Two-line	138	23.84	50	70
Do	12	46.82	73	87
Do	277	[1] 12.70	45	45
Total	3,841	....	..	..
Illinois:				
One-line	55	3.95	50	60
Do	478	5.94	50	40
Two-line	1,289	7.30	50	70
Do	14	12.79	71	88
Three-line	410	25.95	60	80
Do	78	28.24	76	92
Do	53	10.29	50	71
Total	2,327	....	..	..
Indiana:				
One-line	548	[1] 11.97	60	60
Total	548	....	..	...

[1] Actual distance.

An analysis of the movements shown in the above table indicates that much of this tonnage moves on rates which are considerably below the Lowrey basis.

The By-Products Corporation subscribes to a uniform basis of rates provided no increase is made in the present Lowrey rates. The testimony in protest of any higher rates refers to the resulting increase of approximately $170,000 per annum in its transportation charges on coke alone, to the use of private cars in the 1-line hauls for which it receives no allowance, and to certain elements of service contained in the carriers' costs which the shippers claim should be eliminated. The movement in private cars is intrastate, and at rates which are 10 cents per ton under the Lowrey basis.

This shipper is opposed to the arbitrary of 0.5 cent added for deliveries in the so-called outer belt lying in the extreme northern and northwestern sections of the district. It is also pointed out that a differential in some cases exists in favor of Evanston, Ill., as compared with points in the northern section of the district. To points around Deering, Ill., which is within the district, the rate on coke is $1.01 per ton, the same as to the farther distant point of Evanston, which is outside of the district.

Packing-House Products.—This testimony dealt almost exclusively with the short hauls within the stockyards district over the Chicago Junction Railway, which has divided its line into districts. Within

those districts are located plants between which there are movements of certain commodities. That carrier was not selected as one of the cost-study roads. Its movements, all intrastate, range from 200 feet to a mile. The preponderance of the movement is in privately owned refrigerator cars, usually loaded in both directions, for which an indirect allowance is made by way of a difference in the switching charges as between carrier and private cars. It was pointed out that the number of cars owned by the Chicago Junction is inadequate to handle the business and without the use of those private cars the carrier would necessarily incur a per diem charge of $1 per car for the use of foreign cars. The table below, compiled from one of the shippers' exhibits, shows the present charges applying on this line for both interdistrict and intradistrict movements:

	Intradistrict	Interdistrict
Chicago Junction cars:		
Loaded	$7.15	(1)
Empty	3.15	$4.50
Private cars:		
Loaded	3.15	12.00
Empty	3.15	4.50

[1] 2.5 cents, minimum 60,000 pounds.

While the record is not entirely clear, the Chicago Junction apparently proposes to increase all of its rates to the Lowrey basis, except that it desires to continue the present charges of $3.15 and $7.15 per car for intradistrict movements. The charges of $12 and $15 per car for interdistrict movements would be increased to $18 under the proposed rate of 3 cents, minimum 60,000 pounds. As the actual hanging loads weigh 25,000 pounds and the floor loads 35,000 pounds, the increase to $18 per car would, in fact, result in increasing the rates to 7.2 cents and 5.1 cents per 100 pounds for the comparatively short 1-line hauls referred to above.

In view of the nature of these movements, most of which are purely intraplant, and all intrastate in character, over comparatively short hauls, they can not be considered as representative of the movements in general throughout the district. We accordingly make no findings as to this particular traffic.

Sand, gravel, and crushed stone.—These commodities are almost invariably classed together for rate-making purposes. Notwithstanding that fact an effort was made by the producers of crushed stone within the district to justify lower rates on their commodity than on gravel, with which crushed stone competes. This comprehended the processes and higher cost of producing crushed stone.

That testimony was rebutted by the producers of gravel at near-by points outside of the district.

The producers of crushed stone also assert that gravel is produced and shipped largely from near-by points outside of the district which are located on trunk lines able to make local delivery, and that the points of production of crushed stone within the district are located on switching roads which require a connecting-line delivery. In other words, gravel now moves from near-by points outside of the district on single-line rates of 65 cents per ton, while the crushed stone referred to now moves within the district on 2-line switching rates of 50 cents per ton which, under the proposed adjustment, would be increased to 70 cents per ton, resulting in a spread of 5 cents over the gravel rates.

The producers of crushed stone within the district are in accord with the general plan of a uniform rate basis and expressly discountenance a zoning plan, because of the discrimination which they allege generally results therefrom. Despite those views they suggest a different scale of rates per car on their commodity, as follows:

Weight	One line (per car)	Two line (per car)	Three line (per car)
60,000 pounds	$12	$15	$18
80,000 pounds	16	20	24
100,000 pounds	20	25	30

The adoption of the above scale would be a departure from either the present or proposed Lowrey basis. It would result in a decrease in the present 1-line charge and decreases in all charges under the proposed all-commodity basis. It would aggravate an alleged prejudicial situation, general in its scope, said by outside producers to exist now in favor of the present switching district rates as compared with the rates into the district from Zones I, II, and III.[5] Furthermore, its adoption would result in an unwarranted inconsistency within the district rate structure itself. Clear justification for any departures from the all-commodity basis is peculiarly necessary in this case in view of the fact that a uniform all-commodity basis of rates is desired by shippers and carriers alike, eliminating all consideration of the usual factors of distance, volume, loading, value, etc. Such a structure should be applied in the light of its reciprocal nature. To attempt to equalize advantages and disadvantages in spe-

[5] Zones I, II, and III embrace points within 50, 51 to 100, and 101 to 150 miles from Chicago, respectively. The corresponding 1-line rates are 65, 70, and 75 cents, and the connecting-line rates are 85, 90, and 95 cents on basis of net tons. *Chicago Gravel Co. v. Indiana Harbor Belt R. R. Co.*, 146 I. C. C. 101.

cific instances by variations in the rates tends to defeat the purpose and intent of the structure itself.

The producers of sand submitted testimony of a character similar to that submitted by the producers of crushed stone.

In the report of division 1 in the *Chicago Gravel Co. case, supra,* decided June 27, 1928, it was stated, at pages 103 and 107:

> Very little sand and gravel is produced within the district. Producers of crushed stone and slag are located chiefly on the belt lines. During 1925 the average loading of crushed stone within the district was 53.7 tons and the weighted-average haul 22.35 miles. The short-line distance, including in some instances hauls over three lines, is about 35 per cent less. About 35 per cent of the shipments moved over one line for average distance of 17.4 miles and about 65 per cent over two lines for an average distance of 25 miles. The movement over three or more lines was negligible. * * *
>
> It is clear that the Joliet group should not be grouped with the district on this traffic but that it is properly included in the zone and differential adjustment from points outside the district. In the original proceedings the commission specifically found, on a very comprehensive record, that the single-line rate of 65 cents from the Joliet group and other Zone I producing points was not unreasonable. The record in the instant case affords no basis for a modification of that finding.
>
> Assuming, however, that the 15 cents difference between the 65-cent single-line rate from the Joliet group, on the one hand, and the base rate for one-line and two-line hauls within the district, on the other, is too great, the remedy would lie in a proper determination of what the level of the district rates should be. It is our view, however, that this record is insufficient for such a determination. The measure of the district rates on commodities generally, including those here considered, is involved in the *Chicago Switching District case,* now pending. In that proceeding, which is a comprehensive one, a larger and broader record will be available. Our findings here, therefore, are without prejudice to the conclusions which may be reached in that proceeding.

After due consideration of all the facts submitted in relation to sand, gravel, and crushed stone moving from point to point, within the district, there appears no justification for excepting these commodities from the uniform basis of rates contemporaneously in effect at the time of movement.

Slag.—This is primarily a refuse by-product of steel and when sold brings a very low price. Commercially it is used either as a material for fills or it is prepared as a coarse aggregate for concrete mixtures, in competition with sand, gravel, and crushed stone. As refuse it is transported by rail to some available place where it may be dumped. Its accumulation at the steel industries within the district is considered as a nuisance and a hindrance to the operation of those plants. Within the district the carriers have classed refuse slag with cinders, quarry strippings, etc., and have cooperated in its disposal by means of rates lower than the Lowery basis when

carrier equipment is furnished and still lower rates if in private equipment. The record is not clear as to the commercial slag rates other than to indicate that they are higher than the rates on refuse slag.

The shippers emphasize that slag is waste material, but make no distinction between slag in its raw state and that which by the processes of crushing and screening or by washing and granulating has been given a utility value as a construction material similar to that of the sand, gravel, and crushed stone with which it competes. In *Chicago Gravel Co.* v. *A., T. & S. F. Ry. Co.*, 146 I. C. C. 290, and the cases referred to therein, we classed slag with sand, gravel, and crushed stone, and have in every instance prescribed the same line-haul rates for those four commodities without distinguishing raw from commercial slag. That parity should likewise be maintained within the district under its uniform all-commodity rate structure which fundamentally disregards all differentiating characteristics appertaining to the commodities themselves. To some extent private equipment is furnished by shippers for the movement of slag.

Lumber.—The Chicago Retail Lumber Dealers Association, representing 135 lumber yards in the district, submitted testimony to the effect that the present rates, which are generally on the Lowrey basis, are satisfactory to its members. These shippers urge that the present rates be retained. They state that from 4,000 to 5,000 carloads of lumber per year are switched within the district, but that 80 per cent of the entire lumber movement is by motor truck. They contend that a still larger tonnage will be diverted to the trucks if the rates are increased.

Corn products.—The principal products of corn are starch, sirup, sugar, oil, gluten feed, and meal. The Corn Products Refining Company, of Argo, Ill., and the American Maize Products Company, of Roby, Ind., both located within the district, in opposing any increase in the rates, pointed out that the greater part of their shipments within the district weigh less than the minimum of 60,000 pounds, which would result in the payment of freight charges averaging from 6 to 9 mills per 100 pounds in excess of the rates now in effect. This, however, is not due to inability to observe the minimum in physical loading, but is said to be necessary to meet the competition resulting from the lower minima of 36,000 to 40,000 pounds applicable in connection with road-haul movements from points outside of the district, such as Decatur and Granite City, Ill., Cedar Rapids, Clinton, and Keokuk, Iowa.

These producers contend for transit arrangements at Argo and Roby applicable on corn moving in and the products out when des-

tined to points within the district, with provision for the absorption of switching charges. Comparisons were made of the switching charges at Chicago with those within other switching districts, such as Buffalo, N. Y., Detroit, Mich., Cincinnati, Ohio, and Boston, Mass., but no showing was made of the comparative conditions. These shippers contend that lower rates should prevail in the Chicago district because of the greater density of switching traffic, while on the other hand the carriers consider that condition as being conducive to higher costs of service. In a large measure the testimony adduced involved transit privileges and line-haul rates alleged to be prejudicial to Chicago and preferential of other remote points.

Petroleum oil.—The petroleum refineries directly concerned herein are located at Whiting and East Chicago, Ind., points within the district. There is a considerable volume of this traffic, all of which moves in privately owned tank cars, and for which no allowance is made. The empty movement is 100 per cent of the loaded movement. This testimony stressed the possibility of an increased movement in tank trucks if the present rates are increased.

Tar products.—This item embraces roofing and paving tar, paving pitch, and some creosote oils. The products move almost entirely in private tank cars for which, apparently no allowance is made, and they generally move on the full Lowrey rates. The Chicago & Illinois Western publishes a 1-mile rate of $9 per car for a comparatively short haul applicable to intrastate traffic only. It handles five or six cars a day on that rate. That carrier is desirous of continuing the rate of $9 rather than be deprived of the business which, it was testified, would be diverted to water transportation if the rate is increased.

The use of private tank cars for the transportation of tar products, with the resulting elimination of per diem charges and cost to carriers for maintenance of equipment, and other costs incidental to ownership, was especially stressed.

Comparison was made of the average earnings of $22.50 on certain loaded tank cars of coal tar with the approximate cost of $11 for hauling the car in a 3-line movement, but in that comparison the cost for the empty movement apparently was not considered. Ordinarily the use of private tank cars for particular commodities, exclusively, involves a 100 per cent empty movement.

Chemicals.—The Grasselli Chemical Company introduced evidence with respect to the transportation of various acids, salts, phosphates, etc., manufactured by its plant at Grasselli, Ind., which is within the district. With the exception of sulphuric acid and muriatic acid, in tank cars, the commodities embraced within this class move on

the full Lowrey rates. A rate of 2 cents for single-line hauls was voluntarily established by the Indiana Harbor Belt and the Baltimore & Ohio Chicago Terminal on those two acids in private tank cars. American Tank Car Line equipment, owned by the Grasselli Chemical Company, is furnished. No allowance is received for the use of that equipment within the district, except on certain movements for which the Indiana Harbor Belt allows 1.5 cents per car-mile, the same as in road-haul movements. Due to the proportionately greater detention in the district than in road hauls, this shipper considers 1.5 cents inadequate. Comparison was made of that allowance with the owner's cost per car-mile of 6.5 cents in 1926 and 8.1 cents in 1927 to maintain and operate its tank cars.

In justification of the present rates, and particularly the one-line rate of 2 cents on sulphuric and muriatic acid, comparison was made of the present rates in the district with those at Toledo, Canton, and Cleveland, Ohio, and New Castle, Pa. The carload minimum in the latter districts generally is 50,000 pounds and the rates range from 1.9 cents to 2 cents for 1-line hauls, and from 2.25 to 5 cents for 2-line hauls. The average 1-line hauls at those points range from 5 to 9 miles and the 2-line hauls range from 4.24 to 5.03 miles. At Cincinnati, Ohio, the 1-line rate is 2 cents and the average haul is 7.06 miles. The 2-line rate is 2 cents plus $8.10 per car, which applies between Cincinnati and Lockland, Ohio, and the average haul is 19.97 miles. In the Chicago switching district the weighted-average 1-line haul for both chemicals and explosives, as shown by the carriers' exhibits, is 10.7 miles, 2-line 25 miles, and 3-line 17.4 miles. The record does not disclose whether the rates applicable within the compared districts are made upon an all-commodity basis similar to Chicago, or whether they apply only to chemicals.

The witness also referred to the comparatively low grade and heavy-loading characteristics of sulphuric and muriatic acids and to the number of shipments made by the Grasselli Chemical Company within the district.

Iron and steel.—Testimony was produced by steel industries located within the district at Indiana Harbor, Ind., South Chicago, East Chicago, and Grand Crossing, Ill., and on behalf of steel industries outside of the district located at Chicago Heights and Evanston, Ill. The testimony referred generally to the influence of freight rates upon the original location of steel industries within the district; to the history of those rates; and to such transportation factors as the volume and heavy loading of iron and steel billets, pig iron, and scrap iron, which ordinarily are influential in obtaining reduced line-haul rates. It was shown that the present rate of 2 cents, minimum 100,000 pounds, produces minimum revenues of $20 per car, as com-

pared with the present revenue of $15 per car based on the Lowrey rate of 2.5 cents and 60,000-pound minimum.

Railway equipment.—Freight, passenger, work, and other equipment on its own wheels is generally hauled within the district at a rate per car; but rates per 100 pounds are published by some of the carriers. The charges for this service differ widely, ranging from $3.15 per car, which is proposed to be increased to $3.80, to $14 per car, proposed to be increased to $17.40. In either case the rates are not upon the Lowrey basis, and it is the desire of the carriers as well as the manufacturers to continue to move this equipment on excepted rates. A number of the carriers propose no change in their rates. In instances where increases are proposed the increased rates will continue to be upon a per car basis or, if upon a weight basis, the proposed rates would be lower than the Lowrey basis. Railroad equipment was not included in the carriers' cost studies. Furthermore, it appears that new cars frequently move in train lots directly from the yards of the car companies to the connecting line purchasing the cars. Under all the circumstances, and in view of the dissimilarity of conditions surrounding the movement it is apparent that railway equipment on its own wheels may well be excepted from the all-commodity basis, but the record is not sufficiently comprehensive to warrant the prescription of a definite basis of rates.

Other commodities.—Testimony similar to that discussed above was presented in connection with brick, building tile, coal and coke, and various other commodities. They move within the district in carrier equipment, except in the case of some coal and coke shipments, and appear to have no transportation characteristics which would entitle them to any different treatment than others in the all-commodity group.

EX-LAKE TRAFFIC

The switching rates on ex-lake traffic moving directly or indirectly between docks and industries within the district are generally higher than on ex-rail traffic. The record indicates that at various times the tariff provision excluding ex-lake traffic has been withdrawn by certain carriers and subsequently reinstated. At the present time it appears that all carriers exclude ex-lake traffic from the application of the uniform basis of rates, but under the proposed tariffs certain of the carriers have withdrawn the restriction.

The ex-lake switching rates range from 60 to 100 per cent higher than the rates on corresponding ex-rail traffic. The proposed rates range from 43 to 100 per cent higher. The Chicago Association of Commerce urged that all restrictions be removed from ex-lake traffic and that it be accorded the same level of rates as ex-rail traffic. The

testimony in this respect was limited and entirely lacking in comparisons of ex-lake and ex-rail traffic as to transportation characteristics, and affords no basis for a definite finding.

PRIVATE EQUIPMENT

Tar products, petroleum oil, coal and coke, packing-house products, sulphuric acid, muriatic acid, and slag are generally hauled in private equipment, tank cars being used for the liquid commodities. In connection with certain short hauls tar products move on a rate of $9 per car; coke on a rate of 10 cents per net ton less than the Lowrey rates; and packing-house products $3 less than when moved in carrier equipment. The acids move on a special 1-line rate of 2 cents voluntarily established by the Indiana Harbor Belt and the Baltimore & Ohio Chicago Terminal, and in addition on certain movements not fully described in the record the former road allows 1.5 cents per car-mile for use of private tank cars containing acid. Other than those specified no allowance is made by the carriers for the use of private equipment within the district.

In *Lehigh Portland Cement Co.* v. *Director General*, 58 I. C. C. 429, referred to by the shippers, we prescribed rates on crushed stone 10 cents per net ton less when private cars were furnished than when shipped in railroad equipment. However, in subsequent cases we have said that compensation to private car owners where it is necessary to use private equipment should be made through a rental charge and not through a differential in freight rates. *Switching at St. Louis and East St. Louis*, 120 I. C. C. 216. In *Paragon Refining Co.* v. *A. & S. R. R.*, 118 I. C. C. 166, at page 167, division 4 stated:

> Under section 1 of the act the duty is placed upon every carrier subject to the act to provide transportation, including the furnishing of cars. When a shipper furnishes his own car he relieves the carrier of so much of its obligation as a common carrier and is entitled to reasonable compensation from the carrier for the service rendered. The act of May 29, 1917, empowered us to fix the compensation to be paid by the carrier for the use of any car not owned by any such common carrier, and in *In the Matter of Private Cars*, 50 I. C. C. 652, decided July 31, 1918, payment of 1 cent per car per mile for loaded and empty movements was fixed as a reasonable compensation for the use of private tank cars, mileage to be computed on the basis of distance tables without the elimination of mileage through switching districts. The decision was silent as to who should pay the allowance for the distance hauled by the switching line.

And we found that a reasonable allowance for the future would be 1.5 cents per car per mile, computed on the basis of distance table. The shippers, however, contend that the usual allowance of 1.5 cents per car-mile for road service is inequitable in the case of switching

movements, due to the detention in the latter service being entirely out of proportion to the mileage made. No testimony was presented by the carriers in that connection. Clearly, it is the duty of carriers to provide reasonably adequate and suitable equipment for all traffic which they undertake to transport, and it does not necessarily follow from the mere fact that certain shippers are furnishing their own equipment that they are to be compensated therefor. It may be, and usually is, a distinct benefit and advantage to the shipper to use his own equipment. The record does not fully disclose to what extent the use of private equipment is made necessary through failure of the carriers to maintain an adequate car supply, nor is it sufficiently comprehensive to determine what would be a fair and reasonable rental charge therefor. If the carriers and shippers should be unable to agree upon a fair charge for the use of private equipment, this feature of the case may again be brought to our attention for further hearing.

While, as above indicated, the cost study herein presented is one of the most comprehensive ever undertaken in connection with any switching case, there is considerable divergence of opinion between the parties as to the amount of the costs involved. The cost ascertainment was limited to those intradistrict cars which moved wholly over the study roads, the unit costs developed during the 7-day test in 1927 being applied to the intradistrict cars which moved wholly over the 15 study roads during the traffic test in September, 1926. The unit costs developed during the 7-day test in 1927, however, were necessarily based upon averages for all cars handled by all of the study roads in each element of switching service during that period, and this movement included not only all intradistrict cars, study and nonstudy, but also all road-haul cars handled in these elements of switching service. Sixty-one per cent of all intradistrict cars were handled in all elements of switching service by the 15 study roads, and a large part of the remaining 39 per cent were handled in some elements of switching service. It, therefore, seems to follow that the costs for the intradistrict study cars should be reasonably representative of average costs for all intradistrict traffic.

We can not, however, accept the cost study as a definite yardstick by which alone to measure the reasonableness of the rates under consideration, but in addition must apply other tests to determine their reasonableness. In *Switching at St. Louis and East St. Louis*, *supra*, division 3, at page 220, we said: "A cost study is ordinarily little more than a very rough indication, and, even if unusually comprehensive and exact, it should not be the sole basis for fixing rates." The hauls involved range from a minimum of 0.1 mile to a maxi-

mum of 61.1 miles, with one haul shown to be 89.54 miles. The average hauls for all intradistrict switching are 10.8 miles for 1-line, 21.6 miles for 2-line, 24.5 miles for 3-line, and 18 miles for one, two, and three line hauls, combined. These hauls although made with a switch engine are of such great average lengths as to suggest that they are, in effect, line hauls, and except for the fact that they are performed wholly within a district of such unusual size as the Chicago switching district they would be subject to the usual line-haul rates for such distances. In view of this, and the fact that the record contains no evidence to indicate that it costs less to handle traffic by switch engine than by road engine for road hauls of similar distances, it will be enlightening to compare the rates under suspension with line-haul rates prescribed for low-grade commodities for similar average loads and distances.

In the *Southwestern Brick Cases*, 107 I. C. C. 681, we prescribed a distance scale of maximum reasonable carload rates on brick and related articles for application in the Southwest, the single-line scale commencing with a rate of 4.5 cents for hauls of 10 miles and under, with 1 cent added for joint-line hauls.

In No. 17000, Part 11, *Sand, Gravel, Crushed Stone, and Shells*, 155 I. C. C. 247, we prescribed a distance scale of rates for application on sand, gravel, crushed stone, etc., in straight or mixed carloads, between points in Arkansas, Louisiana, and Texas, and western Louisiana. For 10 miles and under rates of 2.5 cents for single-line and 3.25 cents for joint-line hauls were prescribed. Somewhat higher rates were found reasonable for application between points in Arkansas, Oklahoma, and Texas and east-bank crossings in Louisiana.

In No. 17000, Part 6, the *Iron and Steel Investigation*, 155 I. C. C. 517, the scale of rates prescribed for application throughout official territory on a large list of iron and steel articles commenced with 6 cents for 5 miles and under, and for the 15 to 20 mile block, representing the average hauls within the Chicago district, a rate of 8 cents was prescribed. This, and numerous other similar comparisons which could be shown, covering rates prescribed on various low-grade commodities for short hauls, indicates that the rates under suspension are considerably lower than the rates prescribed by us for similar distances in line-haul movements.

RATES BETWEEN CHICAGO HEIGHTS, ILL., AND CHICAGO SWITCHING DISTRICT

Chicago Heights was founded in the year 1893 as an industrial center adjacent to the Chicago switching district. It has a population of approximately 30,000, and about 85 industries. During

1927, 15,251 carloads were moved between Chicago Heights and the district. It is 26.6 miles south of the Chicago station on the Chicago & Eastern Illinois and about 10 miles south of Dolton, Ill., near the southern boundary of the Chicago switching district. The following table, compiled from the record, compares the relative location of Chicago Heights with Gary and Hobart, Ind. While the rates from these compared points, located outside the district, are line-haul rates, and therefore not directly in issue, their relationship at least has an indirect bearing on the issues involved.

		Distance from Chicago station	Distance from Chicago switching district
		Miles	*Miles*
Chicago Heights	C. & E. I. Ry.	26.6	[1] 8.0
Gary	P. R. R.	27.4	4.0
Hobart	do	33.3	9.0

[1] In the exceptions to the examiners' report and on argument it was urged that Chicago Heights is only 3.7 miles beyond the southern boundary of the district of Thornton, Ill. But neither the map filed of record nor the list of stations within the district indicates that Thornton is included within the switching limits. In *Indiana State Chamber of Commerce* v. *A. T., & S. F. Ry. Co.*, 122 I. C. C. 81, 90, it is stated that Chicago Heights is approximately 7.5 miles outside of the outer rim of the Chicago switching district.

The local switching at Chicago Heights is performed by the Chicago Heights Terminal Transfer Railroad, which is solely a switching carrier, serving 83 of the industries located at that point. Between Chicago Heights and the Chicago switching district the movement is performed as switching by the Baltimore & Ohio Chicago Terminal and the Chicago & Eastern Illinois jointly with its subsidiary the Chicago & Western Indiana.

Prior to 1900 various rates were in effect between the two districts. In 1900 a rate of $5 was established by agreement between the Chicago Heights Terminal Transfer and the Chicago & Eastern Illinois. Since 1907 the interdistrict rates generally have been maintained upon a parity with the rates within the Chicago switching district. The following chronological table shows the rates in effect since 1907:

	Per car, minimum 60,000 pounds [1]			Per hundredweight, minimum 60,000 pounds				
	1907	1908	1909	1911	1918	1920	1922	Present
				Cents	*Cents*	*Cents*	*Cents*	*Cents*
Chicago Heights to/from Chicago switching district	....	$5.50 to 8.00	$5.50 to 8.00	1.5	2.0	3.0	2.5	2.5
Within Chicago switching district	$5.50 to 13.00	$5.50 to 13.00	$5.50 to 10.50	1.5	2.0	3.0	2.5	2.5

[1] Excess 18.3 cents per ton.

Both the Chicago Heights shippers and the carriers directly serving that point urge that the existing rate parity between Chicago Heights and the Chicago switching district be maintained, or preferably that Chicago Heights be included within the district. The latter would accord Chicago Heights the desired parity of rates as a matter of course by inclusion of the rates in the Chicago switching tariff rather than by separate publication in the tariffs of the individual lines serving Chicago Heights. The proponents for including Chicago Heights in the district compare it with industrial centers suburban to Chicago which are now within the district, namely, Harvey, Ill., Indiana Harbor, and Hammond, Ind. They point out that since 1900 Chicago Heights and the Chicago switching district have been considered as one homogeneous industrial district, and assert that this rate relationship is the very foundation upon which the industries at Chicago Heights were established, and that its destruction would spell industrial and commercial ruin to the entire community.

In *Indiana State Chamber of Commerce* v. *A., T. & S. F. Ry. Co.*, 122 I. C. C. 81, decided January 20, 1927, division 4 had under consideration the rates on brick and articles taking the brick rates, such as hollow building tile, from various points, including Chicago Heights, Ill., and Hobart, Ind., to the Chicago switching district. The rates of $1.05 on face brick and tile and 85 cents on common brick, applicable from Hobart to points within the Chicago switching district, were attacked as unreasonable, unjustly discriminatory, and unduly preferential of the rates from Chicago Heights. We there said, at page 96:

> Witness for the B. & O. C. T. asserted that the present rates from Chicago Heights are unreasonably low, but did not attempt to say what would be reasonable. The Pennsylvania insists that the rates from Chicago Heights on the B. & O. C. T. should be no lower than the rate from Hobart, because the transportation conditions are substantially similar. All defendants agree that the 50 and 60-cent rates from Chicago Heights menace the present rate structure.

We found that the circumstances and conditions surrounding the transportation of interstate and intrastate shipments of articles in the uniform brick list from Chicago Heights are substantially similar to those surrounding the interstate transportation of like traffic from Hobart, and ordered that rates on that traffic be established from Chicago Heights to the Chicago switching district no lower than contemporaneously maintained from Hobart to the same destination. It was also found that the interstate rate on articles in the uniform brick list from Hobart was not unreasonable. These rates, upon protest of the Manufacturers Association of Chicago Heights on the ground that the proposed rate of $1.05 on hollow

building tile would unjustly discriminate against Chicago Heights and unduly prefer Pullman, Ill., a point within the Chicago switching district, and which enjoys the switching district rates, were suspended under No. 2900. Apparently through oversight the Baltimore & Ohio Chicago Terminal failed to further postpone its schedules beyond January 1, 1929, but subsequently by special permission the higher suspended rates were permitted to be withdrawn, thus restoring the 2.5 and 3 cent rates previously in effect.

The Chicago Heights interests, however, urge that because of the subsequent changed conditions the finding in the *Indiana State Chamber of Commerce case, supra*, that Chicago Heights is unduly preferred to the undue prejudice of Hobart, is no longer controlling. They show that subsequent to the entry of the order therein we authorized acquisition by the Chicago & Eastern Illinois of control of the Chicago Heights Terminal Transfer Railroad; that one of the reasons advanced for granting approval was the improvement in economy and efficiency of operation which would be effected thereby; and that as a result thereof switching service has been substituted for the line-haul service then in effect between Chicago Heights and the Chicago switching district. It appears that manufacturers at Chicago Heights are in keen competition with those located within the Chicago district; that the movement between Chicago Heights and the district is extremely heavy; that the operation of the trains by switching crews is substantially the same as is the operation of a train moving between two terminal yards in the Chicago switching district; and that, while the situation at Hobart affects only hollow building tile, which is but a very small part of the entire movement, there are many other commodities moving to and from Chicago Heights which compete with the commodities shipped by industries in the Chicago switching district.

The *Iron and Steel Investigation*, decided June 3, 1929, included I. & S. Docket No. 2713, wherein the Chicago & Eastern Illinois proposed to cancel the rates of 13 cents on band, bar, and rod iron, and 15.5 cents on other iron and steel articles from Terre Haute and Brazil, Ind., to Chicago, and to establish in lieu thereof a rate of 19 cents. The Highland Iron & Steel Company, protestant, contended that the applicable rate from Terre Haute bore a fixed and definite competitive relationship to the rates from Chicago Heights to the district and to rates within the district. We therein said that points outside of the Chicago district shipping to that district would be subject to the scale of line-haul rates prescribed in that case and that the Terre Haute shippers should be upon the same basis in order to avoid undue prejudice and preference, leaving the matter of rates from Chicago Heights for disposition in the instant case. The

20.5-cent rate subsequently established under our findings in the Iron and Steel Investigation has since been reduced by the carriers to 15 cents, minimum 80,000 pounds, on iron or steel bars. I. and S. No. 3557, *Bar Iron from Terre Haute*, 174 I. C. C. 388.

The carriers' cost data and statistics relative to traffic between Chicago Heights and the district show the average operating expenses to be 2.5, 2.9, and 2.5 cents per 100 pounds for 2-line, 3-line, and 4-line hauls, respectively. The corresponding average hauls are 31.66, 33.42, and 41.94 miles. There being no 1-line hauls between Chicago Heights and the district, considering for the purposes of this case the Chicago Heights Terminal Transfer as a separate line, and no data on 4-line hauls within the district, only the two and three line hauls can be compared. The average two and three line hauls are, respectively, 10 and 7 miles longer and the operating expenses are slightly higher than in the district. Expanding those operating expenses to a total cost basis through the use of an operating ratio of 70 per cent results in increasing the amounts to 3.5 and 4.14 cents, respectively, for the two and three line hauls. It thus appears that these average hauls and costs for the various movements are somewhat greater than those applicable on traffic within the Chicago switching district. Considering all the facts of record it is evident that the present rates are too low and that rates somewhat in excess of the corresponding 2-line and 3-or-more line rates within the district will not be unreasonable for application between Chicago Heights and the Chicago switching district. But inasmuch as there is no proposal on the part of the respondents serving Chicago Heights to establish any higher rates than apply within the district, and no showing on the part of shippers within the district that the maintenance of district rates to and from Chicago Heights will result in undue prejudice to them and undue preference of Chicago Heights, we will make no finding herein which would require higher rates between Chicago Heights and the Chicago switching district. Nothing here said, however, should be construed as setting aside the findings in the *Indiana State Chamber of Commerce case, supra*.

DES PLAINES, ILL.

Des Plaines is situated 16.5 miles northwest of the city limits of Chicago, but within the outer zone of the switching district. It is a so-called red-line station on the Minneapolis, St. Paul & Sault Ste. Marie and the Chicago & North Western from and to which no joint switching rates apply. Greenhouses are its principal industry, and from them flowers are shipped into Chicago. Approximately 900 cars of various commodities were received during 1927 from points

within the district. It appears that there are other flower-growing centers within the district with which Des Plaines competes and which have the advantage of the district switching rates.

The shippers urge that the entire outer zone of the switching district be granted the flat switching rates without the addition of arbitraries, generally 0.5 cent per 100 pounds, which now apply throughout the remainder of the district. The carriers in fact intimated that if the proposed rates on the all-commodity basis are found reasonable they would not object to abolishing the arbitraries and would apply the all-commodity rates to the outer-zone stations. The record does not disclose clearly why in the first instance the district was extended to include the outer-zone stations or the reasons for the application of a different basis of rates. No substantially different transportation conditions are shown to exist relative to location or otherwise. In fact, no reason has been advanced in support of the differential other than what would appear to be the policy of the individual carrier. Therefore, so long as these so-called outer-zone stations are retained within the switching district they should be accorded rates no higher than apply generally within the district.

A large percentage of the traffic under consideration is intrastate in character, but the record does not disclose any difference in the conditions surrounding the handling of the interstate and intrastate movements. In the hope that both the Illinois Commerce Commission and the Public Service Commission of Indiana will bring their rates in harmony with the conclusions herein, no specific finding or order with regard to intrastate rates will be entered at this time.

FINDINGS

The ascertainment of the cost of performing a particular service is always beset with serious difficulties, and this is particularly true in connection with switching costs within an area as congested as the Chicago switching district, which presents a complicated network of rail lines probably not equaled in any other section of the country. The cost study presented herein is perhaps more exhaustive than any heretofore undertaken in any proceeding involving switching charges. Considering these facts and the further fact that all of the parties, both shippers and carriers, were practically unanimous in contending for the establishment of an all-commodity basis to apply throughout the Chicago switching district, it appears that the rates proposed for the one, two, and three-or-more line movements are not excessive. We find:

(*a*) That the rates proposed of 3 cents per 100 pounds for 1-line hauls, 3.5 cents for 2-line hauls, and 4 cents for 3-or-more line hauls, carload minimum 60,000 pounds, within the Chicago switching district as defined in Appendix A, will not be unreasonable for the future for application on all of the commodities switched within the district, except railway equipment on its own wheels. As previously stated, railway equipment on its own wheels was not included in the cost study and the record is not sufficiently comprehensive to permit of a definite finding thereon, but the carriers should establish a reasonable uniform charge on a per car basis for application to all movements of railway equipment throughout the district.

(*b*) That in instances where it is necessary to utilize private equipment the shippers should be compensated for the use thereof by specific charges on a rental basis and not through a differential in the freight rates.

(*c*) That the rates proposed by respondents for application between Chicago Heights, Ill., and the Chicago switching district on this record not shown to be unlawful, except in so far as such rates may be in conflict with the findings in the *Indiana State Chamber of Commerce case, supra.*

The schedules under suspension in I. and S. No. 2900 will be required to be canceled, without prejudice to the filing of new schedules in conformity with the findings herein.

The complaint in No. 20006 will be dismissed. Appropriate orders will be entered.

COMMISSIONERS AITCHISON and TATE did not participate in the disposition of these cases.

APPENDIX A

Chicago switching district defined

Beginning at a point on the shore of Lake Michigan, due north of Clarke Junction, Ind.; thence south to and including Clarke Junction (including freight interchanged between the Indiana Harbor Belt and Wabash at Tolleston, Ind.), thence southwesterly and south just west of the Elgin, Joliet & Eastern to but not including Ivanhoe, Ind.; thence southwesterly to and including Hessville, Ind.; thence westerly along the north bank of the Little Calumet River to a point just west of Globe, Ill.; thence northwesterly west of the Pennsylvania (Logansport division) to a point just south of Dolton, Ill.; thence southwesterly to a point just south of Homewood, Ill.; thence northwesterly just west of the Grand Trunk to a point just west of Blue Island, Ill.; thence north and northwesterly just west of the Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt to a point just south and west of McCook, Ill.; thence southwesterly just south of the Chicago & Illinois Western to and including Willow Springs, Ill.; thence northeasterly just north of the Chicago & Illinois Western to a point just west of McCook, Ill.; thence north and northwesterly just west of the Indiana Harbor Belt to a point just south and west

of Melrose Park, Ill.; thence west just south of the Chicago & North Western to and including the Proviso transfer yard of that company; thence north to Addison Street; thence east to a point south and west of Godfrey yard on the Chicago, Milwaukee, St. Paul & Pacific; thence to a point just north of the Chicago, Milwaukee, St. Paul & Pacific; thence east to the line of the Minneapolis, St. Paul & Sault Ste. Marie; thence northerly just west of the Minneapolis, St. Paul & Sault Ste. Marie to and including Des Plaines, Ill.; thence southeasterly just east of the Chicago & North Western Railway to the city limits of Chicago, thence east just north of the said city limits of the Mayfair cut-off of the Chicago & North Western; thence northeasterly just west of the Chicago & North Western to and including Greenwood Street station; thence southwesterly just east of the Chicago & North Western to the city limits of Chicago; thence east just north of city limits to the east line of Chicago Avenue or Clark Street; thence northerly on the east line of Chicago Avenue 725 feet; thence east to the east line of Chicago, Milwaukee, St. Paul & Pacific; thence southeasterly to center line of Howard Street; thence easterly on the said center line of Howard Street to the shore of Lake Michigan; thence southerly along the shore line to the point of beginning.

APPENDIX B

Notice of October 25, 1926

I. & S. No. 2780
Iron and Steel Between Points in The Chicago Switching District

I. & S. No. 2658
Iron and Steel Between Points in Illinois Freight Committee Territory

I. & S. No. 2713
Iron and Steel Articles from Brazil and Terre Haute, Ind., to Chicago

With a view to providing an adequate record it is requested that the respondents and protestants be prepared to furnish at the hearing in Chicago, Ill. on November 9, 1926 the data called for below in addition to such other evidence as may appear pertinent to the proceedings:

To be Furnished by Carriers:[1]

(a) The shortest haul on iron and steel articles in the Chicago district.
(b) The longest haul on iron and steel articles in the Chicago district.
(c) The average haul on iron and steel articles in the Chicago district.
(d) The information called for in (a), (b) and (c) should be subdivided for one-line hauls, two-line hauls and three or more line hauls if possible. In submitting the data under (c) the average should be given consideration and as accurate as possible an estimate be submitted of the weighted average haul not only for one-line, two-line and three or more line hauls separately, but for the average in the district as a whole. The answers should include all territory to which the carriers' proposed rates are to apply whether they are ordinarily considered to be within the Chicago district or otherwise.
(e) How the two and three or more line rates divide between the respective carriers.
(f) Full description of the methods of handling the traffic, including the setting of cars, movement to destination and removal of car after unloading, if any.

[1] This, of course, will not preclude other parties from furnishing data on these questions.

(g) [2] Cost data with respect to the movement of iron and steel articles within the Chicago district (including interest on investment), covering the average one-line haul, the average two-line haul, the average three or more line haul, also the general average haul, each separately if possible.

(h) What factors make the cost of a switching haul in the Chicago district greater or less than an average road haul of the same length in Illinois or Indiana in the vicinity of Chicago? (Cover only complete local movements and do not include movements in connection with road hauls from or to points without the district.)

(i) Is a local switching haul, as described in the preceding paragraph, of a given length more or less expensive in the aggregate than a road haul of the same length? Give full data supporting answer.

To be Furnished by Protestants:[1]

(j) Full description of the competitive situation as between iron and steel industries within the district and between industries in the district, on the one hand, and Gary, Ind., Chicago Heights, Ill., Pittsburgh, Pa., Terre Haute, Ind., etc. on the other.

(k) Average value, average loading and transportation conditions of the iron and steel articles under consideration.

APPENDIX C.

Traffic analysis.

One-line hauls

Of the total tonnage carried in 1-line hauls 16.95 per cent moved on the present Lowrey rates; 38.22 per cent over; and 44.83 per cent under those rates. At the proposed rates those proportions would be 68.88 per cent on the Lowrey rates; 3.44 per cent over; and 27.69 per cent under those rates. A much greater proportion of the 1-line tonnage would move on the proposed Lowrey rates than on the present rates due to the elimination of some exceptions. From a revenue standpoint, however, it is evident that the 1-line movement on exceptions over either the present or proposed Lowrey rates fails to entirely counterbalance the movement on exceptions under that basis. The latter is shown by the present weighted-average revenue of 2.1 cents as compared with the present rate of 2.5 cents and the proposed weighted-average revenue of 2.5 cents as compared with the proposed rate of 3 cents.

Interstate.—The average revenue on the total 1-line interstate traffic is 2.7 cents as compared with the present Lowrey rate of 2.5 cents and would be 3 cents at the proposed rate of 3 cents and exceptions. Under the present rates there is an extensive movement of coke; clay, gravel, sand, stone; iron, pig and bloom; rails and fastenings; and cement on rates over the Lowrey basis which produce average revenue of 2.9 and 3.8 cents. At the proposed rates and exceptions thereto, the average revenue on the same commodities would be 3 and 3.9 cents. All interstate 1-line movements of grain, ice, chemicals and explosives, some movements of clay; sand, gravel, stone; and other commodities classed as miscellaneous which now yield average earnings of 1.8 cents at the present rates due to exceptions would also be placed upon the full proposed Lowrey basis of 3 cents. There are certain other movements of smaller volume of coke; clay, gravel, sand and stone; iron, pig and bloom; and the

[1] This, of course, will not preclude other parties from furnishing data on these questions.

[2] If actual figures are not available give best estimate.

greater movement of commodities classed as miscellaneous, probably refuse material, which now yield average revenue of 1.5 cents due to exceptions under the present Lowrey basis of 2.5 cents. At the proposed rates that traffic would continue to move on exceptions and would yield average revenue of 2.4 cents as compared with the proposed Lowrey basis of 3 cents.

Intrastate, Illinois.—The depression in the total average 1-line revenue as measured by the standard rates is attributable principally to a large intrastate movement in Illinois on exceptions under the Lowrey basis. That condition would be mitigated to a small extent at the proposed rates due to the elimination of some but not all of those exceptions. The present average net revenue is only 1.4 cents on the total Illinois intrastate 1-line traffic, and the proposal average revenue would be increased to only 1.9 cents on the same traffic. The heaviest Illinois intrastate movement on exceptions under the present Lowrey basis consists of grain; fresh meats; other packing-house products; coal; coke; clay, gravel, sand, and stone; iron, pig and bloom; iron and steel; and miscellaneous, which includes cinders, refuse, etc. The proposed basis eliminates grain entirely as an exception under the Lowrey rates and places it upon the full Lowrey basis. Heavy movements of the other commodities mentioned would continue on exceptions under the proposed Lowrey basis. The heavy volume of tonnage classed as miscellaneous which would continue to move at comparatively low rates under the Lowrey basis has a dominating influence on the Illinois intrastate revenue. As to the other commodities mentioned above, certain movements would be placed upon the full proposed Lowrey basis but as stated the heaviest movements of the same commodities would continue on exceptions under that basis depending upon the policy of the carrier performing the 1-line intrastate service within the State of Illinois. The especially heavy movement of packing-house products; coke; clay, gravel, sand and stone; and miscellaneous brings them into prominence under the latter category. As to packing-house products their continuation on exceptions under the Lowrey basis, in so far as that occurs, is attributable to the predominance of short hauls within the stockyard district ranging from 0.10 to 4.13 miles, the weighted average being 1.03 miles. With respect to the other commodities the record is not in sufficient detail to distinguish between the movements at the Lowrey rates, under and over those rates.

Intrastate, Indiana.—The reverse situation is reflected in regard to the Indiana intrastate 1-mile traffic moving at the present rates in that the weighted-average earnings exceed the standard rates. That traffic, under the present rates, produces weighted-average earnings of 2.6 cents as compared with the 1-line Lowrey rate of 2.5 cents. At the proposed rates the weighted-average earnings would be 3.1 cents as compared with the rate of 3 cents. This is induced by the 1-line movement of cement at 5 cents. While the cement tonnage is consequential it is not of sufficient weight in the computation of the averages to reflect itself materially unless accompanied by the relatively high rate factor; therefore the slight excess in earnings over the standard rate is attributable mainly to the cement rate of 5 cents from Buffington which is 2.5 cents above the present and 2 cents above the proposed Lowrey 1-line rate. The carriers assert that the 5-cent rate is related to the general cement rate structure, which would be disrupted if a change were made in the Buffington rate. There is also a comparatively small volume of material classified as clay, gravel, sand, and stone which produces earnings of 3.8 cents which is in excess of both the present and proposed Lowrey rates of 2.5 and 3 cents, respectively. Other commodities such as coke, and those classified as sugar, sirup, glucose; iron, pig and bloom; iron and steel; and miscellaneous, also move in considerable volume on exceptions that yield average earnings over the present Low-

rey 1-line rates, but would move on the proposed Lowrey basis. The rates on iron, pig and bloom; iron and steel; and miscellaneous commodities will be increased to bring them up to the proposed Lowrey basis; although they now move to a large extent on exceptions slightly over the present Lowrey basis. The traffic and revenue analysis prepared by the carriers, and from which the foregoing data have been extracted, includes other than strictly intradistrict movements over the E. J. & E. within the State of Indiana. That carrier is not a member of the Chicago switching committee, publishes its rates as line-haul rates, and disclaims that its services are in the nature of switching. While the E., J. & E. asserts that it subscribes to the all-commodity Lowrey basis within the district, the record indicates that the rates published by it and upon which a large part of the 1-line traffic under considertaion moved exceed the present Lowrey basis. The inclusion, therefore, of the E., J. & E. in so far as an analysis of the revenue is concerned would tend to distort the results because they are not based strictly upon either an intradistrict movement or upon the Lowrey basis of rates. Allowances must be made therefor in considering the average earnings on Indiana intrastate traffic shown in the above table.

Two-line hauls

Of the total tonnage carried in 2-line hauls 72.64 per cent moved at the present Lowrey rates, 13.12 per cent over, and 14.24 per cent under those rates. At the proposed rates those proportions would be 84.89 per cent Lowrey, 12.78 per cent under, and 2.33 per cent over the Lowrey basis. Comparatively, the tonnage in Indiana which moved intrastate in 2-line hauls is small. The bulk of all 2-line tonnage moves either interstate or intrastate in Illinois. The greatest volume, however, moves intrastate in Illinois as shown by the foregoing table. The total 2-line tonnage moving on the present rate and exceptions produced average revenue of 2.6 cents, as compared with the Lowrey rate of 2.5 cents. At the proposed rate of 3.5 cents and exceptions the revenue on the same tonnage would be 3.6 cents. In this case the excess earnings over the Lowrey basis is mainly attributable to the tonnage that moved and would move interstate and intrastate in Indiana on exceptions considerably over the Lowrey basis. This will be discussed in more detail hereunder.

Interstate.—The tonnage which moves at the present Lowrey rate of 2.5 cents and produces corresponding average revenue comprises 66.18 per cent of the total interstate 2-line movement and 27.78 per cent of the total interstate and intrastate 2-line movement. That embraced some movement, great and small, of practically all commodities. The commodities which moved in greatest volume were, in order according to volume, miscellaneous, probably consisting largely of refuse material; refined petroleum; iron and steel; clay, gravel, sand, and stone; ice; paper and books; iron, pig and bloom; rails and fastenings; coke; asphaltum; fresh meats; products of agriculture; and other metals. At the proposed Lowrey rate of 3.5 cents the foregoing commodities would continue to make up the bulk of the movement, and in addition grain would be included, together with an increased movement of miscellaneous, both of which would be transferred from exceptions under the Lowrey basis to the full basis of 3.5 cents. The proportion of interstate tonnage which would move on the proposed full Lowrey basis of 3.5 cents would be 74.84 per cent of the interstate 2-line tonnage and 31.41 per cent of total interstate and intrastate 2-line tonnage.

The interstate traffic which now moves on exceptions over the Lowrey basis and would continue to so move comprises 21.08 per cent of the total interstate 2-line tonnage and 8.85 per cent of the total interstate and intrastate 2-line

movement.—At the present rates the average revenue is 4.8 cents and at the proposed rates would be 5 cents. Included in this tonnage is a large volume of iron and steel, and cement. Doubtless much of it originates on the E. J. & E.

The interstate traffic which now moves and would move on exceptions under the present and proposed Lowrey basis is 4.08 per cent of the interstate traffic, and 1.71 per cent of the total interstate and intrastate traffic. That movement is practically all coke.

Intrastate, Illinois.—Of this traffic 78.05 per cent now moves on the Lowrey basis. This comprises 44.48 per cent of the total interstate and intrastate 2-line traffic and is made up of all classes of commodities except wheat, corn, and oats. The greatest volume consists of clay, gravel, sand, and stone; coke; iron and steel; fresh meats; ice; iron, pig and bloom; and commodities classed as miscellaneous. At the proposed rates the traffic that would move on that basis would be increased to 93.17 per cent of the Illinois intrastate 2-line traffic and 53.09 per cent of the total interstate and intrastate 2-line traffic. This increase would consist largely of grain which now moves on exceptions under the present Lowrey basis. The average revenue from grain at the present rates is 1.3 cents and would be 3.5 cents at the proposed full Lowrey basis. Certain traffic now moving on rates over the Lowrey basis would continue to move on rates over the proposed basis. That traffic amounts to 5.75 per cent of the Illinois intrastate 2-line movement and 3.28 per cent of the total interstate and intrastate two-line movement. The average revenue at the present rates is 3.6 cents and would be 4.2 cents at the proposed rates. That tonnage consists mainly of iron and steel; clay, gravel, sand, and stone; ice; brick and artificial stone; iron, pig and bloom; and miscellaneous commodities. The movement on exceptions under the present basis amounts to 15.61 per cent of the Illinois intrastate 2-line movement and 8.89 per cent of the total interstate and intrastate 2-line movement. The bulk of that traffic is grain which, as above stated, now produces average revenue of only 1.3 cents. A comparatively small portion of that traffic or 1.08 per cent of the Illinois intrastate 2-line traffic now earning average revenue of 1.6 per cent would continue to move on rates under the proposed Lowrey basis with an average revenue of 2.3 cents. The latter is made up of movements of iron and steel, ice, and miscellaneous.

Intrastate, Indiana.—There is comparatively little traffic of this class. The total amounts to but 1.04 per cent of the total interstate and intrastate 2-line movement. The smaller portion of 36.84 per cent moves and would move at the present and proposed Lowrey rates with average revenue of 2.5 and 3.5 cents corresponding to those rates. The commodities consist of iron and steel, and miscellaneous. The balance of this traffic or 63.16 per cent now moves and would move on rates over the present and proposed Lowrey basis, with an average revenue of 5.2 cents at both the present and proposed rates. The principal commodities are iron, pig and bloom; iron and steel; and cement.

Three-line hauls

Of the total 3-line traffic 33.62 per cent moves on the Lowrey rates, 31.34 per cent over, and 35.04 per cent under those rates. Due to the partial elimination of exceptions under the Lowrey basis, at the proposed rates those proportions would be 41.42 per cent on the Lowrey basis, 31.34 per cent over, and 27.24 per cent under that basis. The average revenue is 3.5 cents at the present rates and would be 4.2 cents at the proposed rate of 4 cents and exceptions. The excess average revenue over the present Lowrey rate of 3 cents and the pro-

posed Lowrey rate of 4 cents may be attributed mainly to a large movement of interstate traffic at rates over the Lowrey basis, presumably originating on the E., J. & E.

Interstate.—The 3-line interstate movement makes up 32.18 per cent of the total 3-line movement, the balance or 67.82 per cent being intrastate in Illinois with no 3-line movements wholly in Indiana. The interstate movement at the present Lowrey rate is 17.42 per cent of the total interstate 3-line traffic and 5.61 per cent of the total 3-line traffic. The average revenue on this traffic corresponds with the present and proposed Lowrey rates of 3 and 4 cents, respectively. At the proposed Lowrey rates the interstate movement strictly on that basis would be slightly increased to 17.70 per cent of the interstate 3-line movement and to 5.70 per cent of the total 3-line movement. The increase would be due to the elimination of some exceptions under the present Lowrey basis which now produce average revenue of only 2 cents, as compared with the present rate of 3 cents. The commodities embraced in this category which move at the present Lowrey rate of 3 cents, in order of their volume, consist of iron, pig and bloom; iron and steel; chemicals and explosives; miscellaneous; and refined petroleum. At the proposed rates grain would be added to those commodities, and all would move on the proposed rate of 4 cents.

The bulk of the interstate 3-line traffic or 75.94 per cent now moves and would move at rates over the Lowrey basis. The average revenue on this traffic is and would be 5.4 cents as compared with the present and proposed Lowrey rates of 3 and 4 cents respectively. The principal commodities embraced herein in order of their volume consist of an extensive movement of iron and steel; cement; rails and fastenings; agricultural implements; and other products of mines.

A small portion of the interstate 3-line movement or 6.36 per cent now moves and would continue to move on exceptions under the present and proposed Lowrey rates of 3 and 4 cents producing average revenue of 2.6 and 3.1 cents respectively. The bulk of this traffic consists of rail and fastenings, and iron and steel.

Intrastate, Illinois.—A large portion of this traffic amounting to 41.31 per cent of the Illinois intrastate traffic now moves on the present Lowrey rates with average revenue of 3 cents. By eliminating some present movements of iron, pig and bloom; iron and steel; and the entire movement of grain on exceptions under those rates which now earn average revenue of only 2.6 cents and placing those commodities on the Lowrey basis that percentage would be increased to 52.68 per cent at the proposed basis, with average revenue of 4 cents, which corresponds with the proposed Lowrey rate. This would consist of practically all classes of commodities. In order of their volume the principal commodities are those classed as miscellaneous; coke, iron and steel; grain; ice; clay, gravel, sand and stone; and iron, pig and bloom. A somewhat smaller portion or 10.16 per cent now moves at rates higher than the Lowrey basis of 3 cents with average revenue of 4.2 cents. Those same movements would continue on exceptions higher than the proposed Lowrey basis of 4 cents and would produce average earnings of 4.7 cents. This traffic consists mainly of iron and steel; coke; miscellaneous; agricultural implements; rail and fastenings; iron, pig and bloom. A considerable movement or 37.16 per cent of this intrastate traffic also moves on exceptions under the Lowrey basis producing average revenue of only 2.4 cents and would continue to so move on exceptions under the proposed rates with average revenue of 3.5 cents. A considerable movement of clay, gravel, sand and stone; miscellaneous; refined petroleum; and coke is embraced therein.

ORDERS

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 31st day of July, A. D. 1931

No. 19610

Switching Rates in the Chicago Switching District

It appearing, That a full investigation of the matters and things involved in the above-entitled proceeding has been had, and that the commission has on the date hereof, entered its report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the common carriers by railroad operating as such, respondents in No. 19610, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist on or before November 10, 1931, and thereafter to abstain from publishing, demanding, or collecting, for the interstate transportation of all commodities, in carloads, in switching service as described in said report, except railway equipment on its own wheels, between all points within the Chicago switching district as described in Appendix A to said report, rates and charges in excess of those prescribed in the succeeding paragraph hereof.

If is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish on or before November 10, 1931, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply, to the interstate transportation of all commodities, in carloads, in switching service as described in said report, except railway equipment on its own wheels, between all points within the Chicago switching district, rates, charges, and minimum weights not in excess of those found by the commission in its said report to be reasonable.

No. 20006

Illinois Slag & Ballast Company

v.

Chicago, West Pullman & Southern Railroad Company et al.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

Investigation and Suspension Docket No. 2900

Switching Rates Between Points in the Chicago and Chicago Heights Districts

It appearing, That by order heretofore entered on April 29, 1927, the commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and decribed in said order, and suspended the operation of said schedules until November 30, 1927;

It further appearing, That the operation of said schedules has been voluntarily deferred by respondents until February 1, 1932;

And it further appearing, That a full investigation of the matters and things involved has been had, and that the commission has, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part thereof:

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel said schedules on or before November 10, 1931, upon notice to this commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 6 of the interstate commerce act, without prejudice to the filing on statutory notice of new schedules in accordance with the conclusions expressed in the said report.

It is further ordered, That this proceeding be discontinued.

By the commission.

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

U. S. Government Printing Office: 1931

APPENDIX B.

INTERSTATE COMMERCE COMMISSION

No. 19610[1]

SWITCHING RATES IN THE CHICAGO SWITCHING DISTRICT

Submitted ..... Decided .....

Interstate all-commodity switching rates, in carloads, applicable within the Chicago switching district and between the district and Chicago Heights, found not unreasonable. Complaint dismissed.

Intrastate switching rates in Illinois and Indiana applicable within the Chicago switching district and between the district and Chicago Heights found not unduly preferential of intrastate shippers or unduly prejudicial to interstate shippers, and not to result in unjust discrimination against interstate commerce. Proceeding discontinued.

J. N. Davis, H. I. Allen, J. R. Barse, D. P. Connell, P. F. Gault, James Stillwell, H. D. Sheean, E. A. Smith, J. F. Connors, H. W. Schaffer, B. M. Hamilton, J. F. Cummins, H. R. Wilkinson, and J. F. Dooley, for railroads serving Chicago switching district.

G. W. Hufsmith and Q. R. Livinghouse, for Public Service Commission of Indiana; and G. H. Shafer for Illinois Commerce Commission.

[1] This report also embraces No. 24950, *Acme Steel Company, et al., v. Atchison, Topeka & Santa Fe Railway Company, et al.*

Luther M. Walter, J. S. Brown, Herbert J. Campbell, J. P. Haynes, J. B. Humphrey, R. B. Coapstick, R. I. Pierce, C. B. Cardy, M. S. Allison, C. E. Hoople, G. R. Gordon, W. J. Hammond, H. G. Brown, C. Kuhn, H. H. Singer, W. D. Lindsay, Harry C. Ames, S. L. Felton, John W. Bingham, H. L. Burkhart, Frank L. Sullivan, A. C. Hultgren, F. H. Belden, J. J. Low, G. N. Staat, L. A. Behrle, R. S. Waterbury, Wilbur LaRoe, Jr., H. G. Legan, C. D. Miller, A. Rundal, J. J. Schmicher, W. J. Womer, J. M. Campbell, Ralph Edgar Riley, Lloyd L. Thoms, C. T. Stripp, Alex Stuart, Charles A. Shank, William A. Moore, F. M. Garland, J. L. Roberts, and G. W. Cole for complainants, interveners, and other parties.

REPORT PROPOSED BY HOWARD C. FAUL AND W. B. WILBUR, EXAMINERS.

In the prior report, 177 I. C. C. 669, decided July 31, 1931, the Commission upon general investigation found that the switching rates proposed by respondents of 3 cents per 100 pounds for 1-line hauls, 3.5 cents for 2-line hauls, and 4 cents for 3-or-more line hauls, carload minimum 60,000 pounds, would not be unreasonable for the future for application within the Chicago switching district, and prescribed rates not in excess thereof to be

published on an all-commodity basis, except railway equipment on its own wheels. The same rates were found not unlawful for application between Chicago Heights, Ill., and the Chicago switching district, except in so far as they might be in conflict with the findings in No. 16116, *Indiana State Chamber of Commerce* v. *A., T. & S. F. Ry. Co.*, 122 I. C. C. 81. The maintenance clause of No. 16116, however, has since been vacated. At the time of the prior proceedings there was pending before

the Illinois Commerce Commission its docket No. 17250, which involved the lawfulness of the schedules filed by Illinois carriers proposing to increase the so-called Lowrey[2] rates applicable intrastate in the Chicago switching district in Illinois to the same basis as proposed for interstate application, and also before the Public Service Commission of Indiana, its docket No. 8939, proposing similar increases in the Indiana intrastate switching rates. These cases were heard jointly with the general investigation in No. 19610. No specific finding was made or order entered as to the Illinois and Indiana intrastate rates but the commission, at page 711 of the report, stated:

> A large percentage of the traffic under consideration is intrastate in character, but the record does not disclose any difference in the conditions surrounding the handling of the interstate and intrastate movements. In the hope that both the Illinois Commerce Commission and the Public Service Commission of Indiana will bring their rates in harmony with the conclusions herein, no specific finding or order with regard to intrastate rates will be entered at this time.

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Subsequently, on August 26, 1931, both the Illinois and Indiana State Commissions found that the carriers had

[2] The Lowrey basis of rates is described on page 676 of the original report as follows: "During 1910 a joint committee was organized composed of shippers and carriers with the object of establishing some uniformity in the local switching rates. After many conferences various differences were harmonized and an agreement was entered into, since known as the Lowrey agreement, which was translated into an all-commodity tariff, effective August 1, 1911, establishing uniform individual and joint rates on all commodities with a few exceptions, such as coal, coke, and grain. The exception as to coal and coke was removed in June, 1927. The so-called all-commodity rates published under the Lowrey agreement were 1.5 cents for 1-line and 2-line hauls, and not to exceed 0.5 cent for each additional line haul, minimum 60,000 pounds. Due to the general increases and reduction in rates since 1911 the present all-commodity rates are 2.5 cents for 1-line and 2-line hauls, and 3 cents for 3-or-more-line hauls, as compared with the proposed rates of 3, 3.5, and 4 cents respectively, minimum 60,000 pounds.

failed to justify the increased rates proposed, and accordingly required their cancelation as of November 10, 1931. The respondent carriers, therefore, on September 10, 1931, filed a motion seeking appropriate findings and order authorizing and requiring them upon the record as made to establish the same switching rates to apply intrastate within Illinois and Indiana as was found reasonable for interstate application. Thereupon the commission on November 2, 1931, reopened the proceedings for further hearing with respect to the relation of the rates and charges for switching in intrastate commerce to the rates prescribed for like switching in interstate commerce for the purpose of determining whether the adjustment of the interstate and intrastate rates and charges is unduly prejudicial to interstate shippers and traffic, or unjustly discriminatory against interstate commerce, in violation of Section 13 of the Interstate Commerce Act, with a view to the entry of such order or orders as may be necessary to correct such violation or violations as may be found to exist.

A petition filed on behalf of various interests within the switching district seeking to have the Commission's order set aside and to reopen the case for further hearing was denied by the commission on October 12, 1931. Thereupon on December 28, 1931, the complaint of the Acme Steel Company, *et al.*, was filed, attacking the interstate rates which became effective on December 10, 1931, in compliance with the commission's decision in No. 19610, hereinafter referred to as the prior report. The motion of defendants to dismiss the complaint without hearing and their request for oral argument on the motion were overruled. The complaint accordingly was docketed as No. 24950, (listed in the margin on page 1 hereof), and assigned for hearing. The two cases were heard separately, but in order to prevent repetition and

to conserve the records it was stipulated that any pertinent or relative testimony in the record in one case should be considered as part of the record in the other case. Separate briefs were required to be filed, but in view of the nature of the testimony and the conclusions herein proposed it is found desirable to issue a consolidated report. Appropriate notice of the hearings was served upon the authorities of the States of Illinois and Indiana.

Rates herein are stated in cents per 100 pounds unless otherwise noted.

The Complaint Case.

In No. 24950 the complainant corporations, engaged in various lines of industry with plants located in the Chicago switching district and at Chicago Heights, by complaint filed December 28, 1931, allege that the interstate switching rates applicable to carload traffic between points in the Chicago switching district and between points in that district and Chicago Heights, which became effective December 10, 1931, in conformity with the commission's decision in the prior report, of 3 cents for 1-line, 3.5 cents for 2-line, and 4 cents for 3-or-more-line hauls, and the minimum of 60,000 pounds, are greater than the traffic will bear, and were and are unjust and unreasonable, in violation of Section 1 of the Interstate Commerce Act. Reasonable rates for the future and reparation are sought. However, at the hearing and on brief complainants recognized that "it is now, under the recent decision of the Supreme Court in the *Arizona Grocery case* impossible for the commission to award reparation by reason of damages due to the publication and application of rates found reasonable by the commission." But reparation is sought on shipments made in private tank

cars because of the failure of the carriers to compensate the shippers for the use of their privately-owned tank cars.

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The State commissions of Illinois and Indiana filed a joint petition of intervention. Intervening petitions also were filed by various other interests.

The facts set forth in the prior report will be repeated herein only to the extent necessary for clarification. The history of the switching rates within the district is discussed on page 676 thereof. The so-called all-commodity rates published under the Lowrey agreement, as subsequently changed by the general increases and reductions, became 2.5 cents for 1-line and 2-line hauls, and 3 cents for 3-or-more-line hauls, minimum 60,000 pounds, which, as above stated, on December 10 were increased to 3 cents, 3.5 cents and 4 cents, respectively, minimum 60,000 pounds.

THE COST STUDY.

The details of the cost study, the formula used in connection therewith, and the criticisms of the carriers, the shippers, and the representatives of the Illinois and Indiana State commissions were set forth at length in the prior report. Similar criticisms were again advanced at the further hearings. The defendants submitted no additional cost data. Complainants point out that the prior record was closed on September 21, 1928, and contend that the test periods within which the unit costs were determined should have been made on all of the 35 switching carriers operating within the district, and for a longer and more recent period of time in order to bring the study down to date. Generally, their criticisms suggest greater refinement in arriving at the unit costs. They stated that the transportation, operating, traffic, and

competitive conditions have changed, those now obtaining and which will prevail in the future being substantially different from the conditions which existed during the past five years.

Complainants contend that the entire district should have been zoned as to expenses and investment, and the

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expenses and return on investment local to each zone allocated thereto, in order that the average costs assigned to switching movements would represent the expenses and return on investment only of the zones through which each car actually moved. To some extent this would also differentiate between heavy and light locomotives where the service in a particular zone required one type to the exclusion of the other. Complainants specify maintenance expenses which were not allocated to the particular place where the expense was incurred by the study roads. These expenses, however, were confined to the lines of the study road which incurred them. Complainants would eliminate any element of expense incurred at a particular place from an average cost applied elsewhere. They point to switching by the carriers at industries where the tracks are owned and maintained by the industries, but the element of maintenance incurred by the study roads on their own lines was represented in the average cost assigned to cars switched at industries. This subject was introduced in the former hearing. It was therein considered that if such a refinement were possible and had been attempted, it would have entailed a prodigious amount of labor, time, and expense in addition to what was consumed in the preparation of the study made. The total cost would not have been reduced thereby, and the unit costs, which in any event can not be definitely ascertained, would merely have been increased in certain zones and reduced in others.

Defendants apportioned a part of general expenses to switching on basis of the amount of other allocated expenses. Complainants object to that basis on the ground that it gives to every dollar expended for labor, material, and miscellaneous expenses the same weight, despite the fact that a constant relationship is not always present between expenses directly assignable to the various operations or between those expenses and general expenses. While the relationships which complainants refer to are

not constant, nevertheless the basis used has been recognized as equitable in a practical sense to determine costs in various lines of business over a long period of time. It is used for the apportionment of unassignable general expenses in the commission's Rules Governing The Separation Of Operating Expenses Between Freight Service And Passenger Service On Large Steam Railways effective January 1, 1920, and now in effect.

The formula provides for the distribution of 67 expense accounts. The remaining expense accounts are so-called optional accounts. Any allotment of the latter depends upon whether they bear any relationship to switching movements on the individual road. The switching roads distributed all accounts due to their service being entirely switching. It was found that the amount distributed from the 67 accounts on switching roads bore a ratio of approximately 90.8 per cent to the total distributed from all accounts. The trunk lines adopted that ratio to expand the amount they had distributed from the 67 accounts to the equivalent of a distribution of all accounts. Complainants assert that there was no justification for the foregoing procedure on the ground that the trunk lines are not comparable with the purely switching roads. Their position is that a one-line haul would be

charged on the same basis as a three-line haul, and an intradistrict movement on the same basis as a movement in connection with a line haul. This statement is somewhat vague in view of the fact that the record clearly indicates that under like conditions there are no different services required in the switching of a car in connection with a line haul than in an intradistrict movement other than either the initial or final terminal service. The same may be said in comparing a one-line haul with a three-line haul in an intradistrict movement, but in this case there would be two interchanges required in the three-line haul and none in the one-line haul. In each case the cars would be charged only for the respective

services rendered. The use of the factor to increase the distributed expenses to include a portion of the so-called optional accounts had the effect of distributing that portion to switching on basis of the distributed expenses.

In apportioning maintenance of tracks the carriers under a provision in the cost finding formula computed 3 miles of yard track as the equivalent of one mile of main line. No maintenance of main line track was included in the costs. The costs arrived at and presented in the original hearing reflected only the maintenance of yard tracks in accordance with that equation. Complainants direct attention to that provision and state that if the equation had been made it would have decreased the switching cost. This allegation of complainants appears to be without foundation.

Complainants show the total investment in road and equipment of nine switching carriers operating in the district, as well as the commission's valuation, together with the average rate of return of 7.89 per cent for the seven years ended December 31, 1931. They compare it

with the rate of return of 5.66 per cent for the year ended December 31, 1931. These data are based upon total investment and income. The return on investment devoted to the intradistrict switching under review is not shown. No conclusion can be drawn as to the return from intradistrict switching from these totals.

In the prior report, at page 711, the commission said:

> The ascertainment of the cost of performing a particular service is always beset with serious difficulties, and this is particularly true in connection with switching costs within an area as congested as the Chicago switching district, which presents a complicated network of rail lines probably not equaled in any other section of the country. The cost study presented herein is perhaps more exhaustive than any heretofore undertaken in any proceeding involving switching charges. Considering these facts and the further fact that all of the parties, both shippers and carriers, were practically unanimous in contending for the establishment of an all-commodity basis to apply throughout the Chicago switching district, it appears that the rates proposed for the one-two, and three-or-more line movements are not excessive.
>
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At the further hearings herein the representatives of the State commissions again took the position, similar to the position of the shippers, that the increased rates had not been justified; and that the evidence as to cost taken in connection with the 1926 traffic analysis, the hearings having been closed in 1928, should be brought down to date to reflect the present day changed conditions. Some of the changed conditions enumerated since the prior record was closed are: (1) falling off in volume of traffic; (2) improvement in the highways within the district resulting in diversion of much additional tonnage from the rail lines for movement by truck; (3) the decline in value of many of the articles or commodities transported; (4)

reduction in wages and cost of supplies; and (5) curtailment in the amount of service rendered by the carriers to the industries within the district. It appears that some of the commodity prices are on a lower level than prevailed at the time of the prior hearings, and that there has been a falling off in tonnage within the district since the prior hearings. The witness for one of the brick-manufacturing concerns with plants within and outside the switching district, but in the vicinity of Chicago, testified that in 1926 they shipped approximately four hundred million bricks to points within the district, but that in 1931 the number dropped to approximately eighteen million bricks. Both periods being prior to the effective date of the interstate increases the loss in tonnage, of course, is not attributable to the increases in the interstate rates. Other witnesses testified to the decreased tonnage which has been moving since the close of the prior hearings, and much evidence was adduced which indicates that competition by truck has become more acute. However, this reduction in the volume of tonnage is by no means chargeable to truck competition alone, but as indicated above, may be attributed in large part to, and is indicative of, the then generally prevailing downward trend of business throughout the country. This

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is demonstrated by the following testimony of one of the witnesses:

> Industries, generally, and particularly the iron and steel industry, are buying proportionately less raw materials, which is reflected in the unit volume purchased. In other words: where commodities, in the past, might be purchased in multiples of carloads, a single carload or less carload would suffice for immediate delivery. These conditions lend themselves admirably to handling by truck. * * * What has been stated in connection with raw materials will

apply with equal force to the finished products shipped to the Chicago switching district.

Much of the testimony submitted in regard to truck competition related particularly to the heavy loading commodities, such as crushed stone, sand and gravel, brick and coke; and reference also was made to movements by boat and pipe line. An attempt was made to show the actual costs of movements by truck, but the figures differ widely, depending in part on whether the trucks are owned and operated by the shippers, and partly whether the movement was in contract trucks. The witness for one of the oil shipping concerns testified that deliveries by truck to eight of their stations would effect a saving of an average of $9.41 per car. A concern handling coke stated that the cost of shipping the coke in its trucks amounted to 18 cents per ton for a haul of approximately 4.5 miles, which they compared with the interstate rail rate for the two-line movement of 70 cents. The witness interested in the movement of crude tar stated that they could handle their traffic by barge at a rate less than 2.5 cents, and that if this intrastate rate is increased the rail carriers would lose all of the traffic. The witness for the concern manufacturing sulphuric acid and other chemicals testified that sulphuric acid can be trucked to its Indiana destinations at a cost of 31.5 cents per ton, which is 8.5 cents less than the present intrastate rate on this commodity, and that to some points pipe line deliveries can be made at 36 cents per ton.

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The evidence discloses that with respect to some traffic the carriers could not make rates low enough to regain the traffic from the trucks to the rail lines. It appears that because of the location of the particular buildings under construction at off-track points, the material would

of necessity have to be trucked for a long distance even though it would be hauled into Chicago by rail. In those instances it is clear that it is impossible for the rail lines to compete with the movement by truck under any basis of rates. Furthermore, the commission may not lawfully require reductions in rates below a reasonable level in an effort to keep traffic upon the rail lines or to meet motor truck or water competition. The commission in *Southern Class Rate Investigation*, 100 I. C. C. 513, at page 611, said:

> In fixing maximum reasonable rates, competition is not a factor which we may take into consideration. The carriers may, within limits, make low rates for the purpose of meeting competition, but we are without power to compel them to meet it.

The defendants offered no evidence in the complaint case. They took the position that the only issue involved is whether the rates established in conformity with the commission's order violate Section 1 of the Act, and that since the commission, upon a complete record which involved the reasonableness of the rates herein attacked, has entered its report and order, and rates in accordance therewith having been made effective on December 10, 1931, they were warranted in relying on the report and order made in the original case, the complaint having been filed but 13 days subsequent to the effective date of the new rates, and that there was presented no evidence or facts new or different from the facts previously of record. On brief they contend that the only difference

between the conditions which existed at the time the evidence in the original case was taken and at the time of the further hearings was the substantial decrease in the volume of traffic due to the general economic depression. The carriers call attention to the commission's decision

in *Pacific Mutual Door Co.* v. *A. A. R. R. Co.*, 101 I. C. C. 633, wherein at page 634, division 3 said:

> Defendants take the position that we are not bound by our former decision; and they, therefore, ask that the present case be decided on its merits. When a given situation has been fully considered and deliberately passed upon, that decision ought not to be disregarded and the question kept open indefinitely unless good cause is shown for the adoption of a different course. The first step in the proceeding upon which complainant relies, was a complaint filed January 14, 1914. Since then several hearings have been had and decisions rendered bearing upon the situation. Since the report of January 16, 1923 * * * defendants and interveners have petitioned for rehearing, but that was denied. The evidence introduced by them in this case is substantially similar to that introduced in the record of the decided case. The present record does not furnish a sufficient reason for setting aside the previous finding of unreasonableness.

They urge that this language is appropriate and should be here adopted.

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The defendants further contend that the decrease in tonnage has resulted in increasing their unit costs due to the fact that units of traffic have greatly decreased, with no opportunity to reduce operating expenses correspondingly on account of the irreducible minimum having been reached. In other words, a decrease in volume of traffic unaccompanied by a proportionate decrease in operating expenses would cause unit costs to increase rather than diminish. And a reduction in total operating expenses alone will not support a conclusion that the present interstate rates should be adjusted downward under present traffic conditions.

The following table, compiled from exhibits submitted in support of their contention that the unit cost in

handling cars in the Chicago district has increased since the close of the original record in this case, depicts the situation for the years 1928 to 1931 with respect to the eight switching carriers[3] included in the cost study:

AVERAGES PER CAR HANDLED.

Operating Expenses	1928	1929	1930	1931
Maintenance of Way and Structures	$ .56	$ .53	$ .60	$ .53
Maintenance of Equipment	.63	.65	.66	.63
Traffic	.03	.03	.04	.04
Transportation	2.48	2.50	2.56	2.62
General	.16	.17	.20	.22
Total Operating Expenses	3.86	3.88	4.06	4.04
Tax Accruals	.48	.51	.45	.61
Total Operating Expenses and Tax Accruals	4.34	4.39	4.51	4.65
Operating Ratio	66.97%	67.70%	72.35%	74.11%

From the above it appears that the total operating expenses per car handled increased from $3.86 in 1928 to $4.04 in 1931.

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Respondents' exhibits further show that the total operating revenues for the same switching roads referred to above, but including the Chicago River & Indiana Railroad, for the year 1931 were approximately ten and one-half million dollars less than for the year 1928, whereas

[3] Baltimore & Ohio Chicago Terminal Railroad, Belt Railway of Chicago, Indiana Harbor Belt Railroad, Chicago & Illinois Western Railroad, Chicago Short Line Railway, Chicago, West Pullman & Southern Railroad, Illinois Northern Railway and Pullman Railroad.

the total operating expenses in 1931 for the same roads were only five and one-half million dollars less than in 1928. The carriers also urge that the proper and necessary railroads have not been made defendants, the Elgin, Joliet & Eastern Railroad and the Chicago Heights Terminal Transfer Railroad not being named as defendants. All the industries in Chicago Heights, except one, are located on the latter line. The rates applicable from Chicago Heights to points within the Chicago switching district are published in an agency tariff as joint rates to which the Chicago Heights Terminal Transfer Railroad is a party, and in view of the conclusions herein reached, further discussion of this matter appears unnecessary.

Comparison was made in the prior report of the rates applicable within the district with the scales of rates prescribed for road-haul movements in various cases, including No. 17000, Part 6, *Iron and Steel Articles*, 155 I. C. C. 517. The commission therein prescribed a scale of rates for application throughout official territory on a large list of iron and steel articles, the scale commencing with 6 cents for 5 miles and under. The carriers since have voluntarily reduced these interstate iron and steel rates for short hauls up to 100 miles, beginning with 3 cents, instead of 6 cents, for the 5-mile block. The rate for the 15 to 20 mile block, which represents the average haul within the switching district, is 5.25 cents. Based on the carload minimum of 40,000 pounds this latter rate produces a minimum carload revenue of $21. The average loading of iron and steel articles, however, is considerably in excess of the prescribed minimum,

averaging approximately 65,000 pounds per car. *Iron and Steel Articles, supra.* Based on the latter weight

the line-haul revenue under the 5.25-cent rate would be in excess of $34 per car. One of complainants' witnesses submitted an exhibit showing the minimum revenue per car derived under the interstate switching rates applicable in the Chicago district and between the district and Chicago Heights, as compared with the minimum per-car revenue derived from rates applicable on road-haul traffic on 82 different commodities for single and joint-line hauls between Illinois, Indiana, and Wisconsin points. Under the 60,000-pound minimum prescribed the revenue for the one, two and three-or-more-line switching movements is shown to be $18, $21 and $24 per car for average hauls of 13.19, 21.32 and 26.53 miles, respectively, within the district, and 31.66 miles for two-line and 33.42 miles for three-line hauls between the district and Chicago Heights, as compared with minimum per-car revenues for the road haul movements ranging from $12 to $24 under carload minima ranging from 14,000 to 30,000 pounds, for hauls of 11 to 183 miles. The witness, however, was not familiar with the extent of the movements under those rates, nor was the average loading shown for any of the commodities with which comparison was made. That witness contended for rates of 2.5, 3, and 3.5 cents, minimum 60,000 pounds, to apply on all commodities moving both interstate and intrastate within the Chicago switching district and between the district and Chicago Heights.

The witness for the Lehigh Portland Cement Company and the Marquette Cement Manufacturing Company, with plants located at Oglesby, Ill., in the La Salle, Ill., switching district, stated that prior to December 10, 1931, following the decision in *Atlas Portland Cement Co.* v. *C., B. & Q. R. R. Co.*, 81 I. C. C. 1, the rate on cement from Buffington, Ind., to Chicago, 22 miles, was 6.5 cents.

and that the contemporaneous rate from La Salle, 96 miles distant from Chicago, was 8 cents; but that effective with the Docket 19610 increases the Elgin, Joliet & Eastern Railroad canceled its line-haul rates and published in lieu thereof the switching rates which became effective within the Chicago district. This had the effect of increasing the spread Oglesby over Buffington to 5.8, 5.3 and 4.6 cents, respectively, for the one, two, and three-line movements from Buffington. This witness urged that any findings which would further reduce the rates on cement should specifically exclude the Buffington to Chicago rate. Under the scale prescribed in *Atlas Portland Cement Co., supra,* the rate for 20 miles, carload minimum 50,000 pounds, was 7 cents, resulting in a minimum charge of $35 per car. The shippers further call attention to the fact that the E., J. & E. is not a member of the Chicago Switching Committee in the Chicago district; that prior to December 10, 1931, it published its rates as line-haul rates which had been on the basis of 5 cents and 6.5 cents, but that effective on that date this carrier published the switching basis of rates, thus voluntarily shrinking its revenues and which further resulted in reduced divisions to the Chicago district carriers.

The fifth-class rate prescribed in the eastern class rate revision, is 11 cents for 5 miles and 12 cents for 20 miles; and the sixth-class rate 8 cents for 5 miles and 9 cents for 20 miles.

Various operating officials of the different carriers directing these switching movements in the Chicago district testified that the traffic is handled in a manner similar to the road-haul traffic, and that the operation of the switching trains is comparable to road-haul opera-

tions. The business is moved in regular transfer trains consisting of cars for both interstate and intrastate movements, operated under full crews with the air coupled up and supplied with cabooses, and both road-haul

and switching business is handled in the same trains. This testimony is substantiated by the witness for the Inland Steel Company who stated:

> Traffic handled in switching service within the Chicago switching district, to or from the plants of the Inland Steel Company, is accorded identically the same service as roadhaul cars that are received from or destined to points outside the district. These cars move in the same trains between the plant and the break-up yards of the Indiana Harbor Belt, and this in the same manner in which traffic was handled during the cost study period of 1927.

Complainants voiced objection to any comparison of switching rates with rates prescribed for line-haul movements, apparently on the ground that the cost of performing switching service is less than the cost involved in line-haul movements. Such contention, however, is repugnant to the pronouncement of the commission in *Stielow Bros. Co.* v. *C. & N. W. Ry. Co.*, 52 I. C. C. 339, wherein it was recognized that a switching service, especially where congestion prevails, is more expensive than a road haul for a like distance.

COMPARISON WITH RATES IN OTHER SWITCHING DISTRICTS.

Much testimony was offered to show that charges for switching in other switching districts, such as Buffalo, N. Y., Cincinnati, Cleveland and Toledo, Ohio, Detroit, Mich., Pittsburgh and Erie, Pa., St. Louis, Mo. and Duluth, Minn., are substantially lower than the rates

applying in the Chicago district for similar switching service. These witnesses stated that the Chicago district, due to the absence of grades, curves, tunnels, and expensive bridges, permits maximum train-load movements, as contrasted with the topography of the Cincinnati, Pittsburgh and St. Louis switching districts "where there are heavy grades, tunnels, and expensive bridges indicating costly switching operation performed at lower rates than apply in the Chicago district in addition to higher maintenance costs." In *Switching at St. Louis and East St. Louis,* 120 I. C. C. 216, at page 217, the commission, in referring to the St. Louis switching

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district, said: "The switching is done over practically level terrain." On brief, complainants "insist that the Commission should measure the reasonableness of the switching rates complained of by comparing them with switching rates in other territories the differences in transportation conditions considered * * *." No cost figures, however, were submitted to show the actual costs of handling the traffic in the compared districts. Neither was any attempt made to compare the average hauls in those districts with the average hauls within the Chicago district. In *Increased Switching Charges at Detroit,* 91 I. C. C. 82, at page 83, the switching hauls in the Detroit switching district are stated to range from 0.5 to 20 miles, with an average haul of about 8 miles. Certainly not any of the compared districts approach the magnitude of the Chicago district, which is approximately 40 miles in length and from 7 to 15 miles wide, comprising over 600 square miles. This area contrasted, for example, with the Pittsburgh switching district in which the maximum haul does not exceed 10 miles, may

not fairly be said to be a comparable district. Nor is any reference made to the relative property values per mile of road in Chicago as contrasted, for example, with the Toledo, Erie, and other switching districts referred to.

Complainants refer to the second supplemental report of the commission in Docket 21723, *Container Service*, 185 I. C. C. 787, decided July 11, 1932, calling particular attention to the following statement:

> Since our original decision the conditions of transportation confronting the railroads generally have been subjected to material change. The volume of traffic moved has radically decreased. Despite the unprecedented decrease in the volume of traffic generally, the number of trucks competing with the railroads and the intensity of that competition have materially increased. The transportation conditions affecting the respondents today were not in contemplation by us at the time of the original decision.

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They urge that the commission in the instant case likewise should take cognizance of the inroads being made by competing transportation agencies and require a reduction in the rates under consideration. Attention, however, is directed to the fact that the commission in the second supplemental report in the *Container case* did not require reductions in the rates of any carrier to meet competition by motor trucks. It merely suspended the effective date of its order to enable respondents which might desire to continue the use of container service to "have the same freedom of opportunity to meet truck competition" as is being practiced by other respondents. In other words in the *Container case* the carriers petitioned the commission for modification of the

prior order so as to permit them to meet competition by truck. In the instant case, however, the carriers are defending the reasonableness of the rates under attack.

TRUCKING COSTS.

Some of the carriers have contracts with truck companies for trucking between various stations within the switching district for which they pay charges ranging from 5 cents for 1.5 miles to 15 cents per 100 pounds for 17 miles, but these charges do not include loading or unloading. Comparison was made of the similarity of the trucking conditions within Chicago and the St. Louis, Mo., districts. It appeared that a cost study made within the St. Louis district developed road-haul costs of $1.014 per ton for average hauls of 2.13 miles, and that with the addition of the loading and unloading charges, clerical costs, etc., the total cost for an average load of 6.4 tons amounted to $1.56 per ton. Respondents submitted these figures to show that an increase in the intrastate rates to 60 cents, 70 cents and 80 cents per ton for one, two, and three-or-more-line hauls, respectively, would not cause diversion of the intrastate traffic to the trucks. On the other hand, considerable testimony was

offered by the shippers which indicates that their shipments can be, and are being moved by truck at lower costs than under the rail rates. One of the witnesses for one of the brick concerns which owns and operates its own trucks testified that, taking into consideration the loading and unloading charges, it costs 65 cents per ton more to ship by rail than if moved by truck. The cost for handling the brick under consideration by truck for 16 miles was stated to be 97.5 cents per ton. In this,

as in many other instances, however, the tonnage was destined to a non-rail point, which would have necessitated some movement by truck in addition to the rail movement.

Specific Commodities.

Much testimony was adduced on behalf of various parties interested in the rates on particular commodities, not only with respect to the level of the rates, but also in regard to competing transportation facilities, the decrease in the volume of the movement, etc.

Sand, Gravel, and Crushed Stone.—The witnesses on behalf of the sand, gravel, and crushed stone industries testified that a large percentage of this business is now moving by truck, and that the truck movement is rapidly increasing; also that the movement by water for the past two or three years has been substantial. One of the witnesses contended that there has been a material change in the transportation, sale, and distribution of stone since the prior hearings. He stated that stone at that time was sold on the basis of about 80 cents per ton at the quarry, but that the price gradually dropped to about 52 cents per ton in 1931, due in part to the keener competition and in part to the curtailed demand for the product. Among the reasons advanced by these interests for seeking a lower basis of rates than on the other

commodities were (1) movement in greater volume; (2) the low value of the product; (3) movement in open-top cars; (4) absence of loss and damage claims; and (5) that the average haul is shorter than on other commodities. It appears that of the total deliveries of stone made in 1930 only 14.4 per cent moved by truck, but that

in 1931 the truck deliveries had increased to 18.3 per cent, and that for the first four months of 1932 the movements by truck had increased to 31.2 per cent of the total deliveries. While these interests at the prior hearings contended for per-car charges of $20, $25 and $30 for one, two, and three-line movements, respectively, they now contend that those rates would not attract the business, and urge that rates of $15, $20, and $25 for minimum cars of 100,000 pounds capacity should be established, and which they feel would restore the movements to the railroads. Stone produced within the district comes into competition with gravel and sand moving in from points outside of the district. In the prior report, at page 698, the commission said:

> The producers of crushed stone also assert that gravel is produced and shipped largely from near-by points outside of the district which are located on trunk lines able to make local delivery, and that the points of production of crushed stone within the district are located on switching roads which require a connecting-line delivery. In other words, gravel now moves from near-by points outside of the district on single-line rates of 65 cents per ton, while the crushed stone referred to now moves within the district on 2-line switching rates of 50 cents per ton which, under the proposed adjustment, would be increased to 70 cents per ton, resulting in a spread of 5 cents over the gravel rates.
>
> The producers of crushed stone within the district are in accord with the general plan of a uniform rate basis and expressly discountenance a zoning plan, because of the discrimination which they allege generally results therefrom. Despite these views they suggest a different scale of rates per car on their commodity, as follows:

Weight	One line (per car)	Two line (per car)	Three line (per car)
60,000 pounds	$12	$15	$18
80,000 pounds	16	20	24
100,000 pounds	20	25	30

The adoption of the above scale would be a departure from either the present or proposed Lowrey basis. It would result in a decrease in the present 1-line charge and decreases in all charges under the proposed all-commodity basis. It would aggravate an alleged prejudicial situation, general in its scope, said by outside producers to exist now in favor of the present switching district rates as compared with the rates into the district from Zones I, II and III.[5] Furthermore, its adoption would result in an unwarranted inconsistency within the district rate structure itself. Clear justification for any departures from the all-commodity basis is peculiarly necessary in this case in view of the fact that a uniform all-commodity basis of rates is desired by shippers and carriers alike, eliminating all consideration of the usual factors of distance, volume, loading, value, etc. Such a structure should be applied in the light of its reciprocal nature. To attempt to equalize advantages and disadvantages in specific instances by variations in the rates tends to defeat the purpose and intent of the structure itself.

[5] Zones I, II and III, embrace points within 50, 51 to 100, and 101 to 150 miles from Chicago, respectively. The corresponding 1-line rates are 65, 70, and 75 cents, and the connecting-line rates are 85, 90, and 95 cents on basis of net tons. *Chicago Gravel Co.* v. *Indiana Harbor Belt R. R. Co.*, 146 I. C. C. 101.

Grain and Grain Products.—The Board of Trade of the City of Chicago filed a separate brief in defense of the rates on grain and grain products. In general the representative of the Board adhered to the position taken in the original case; that is, that there is no substantial evidence to support the finding of reasonableness

with respect to the grain switching rates. He stated that while *grain products* present certain problems which do not arise with respect to the other commodities they are "in a sense bound up with * * * the other commodities," but strongly urged that the grain[4] switching rates differed materially from those affecting the rates with respect to grain products. He contends that the Lowrey or all-commodity basis was from the outset a contractual relation to which the grain interests were not a party, and that by mutual agreement the grain

rates were carried as an exception to the Lowrey basis. Similarly, a number of other commodities were not included in the Lowrey agreement and were accorded a different basis of rates.

Coal.—The South Chicago Coal & Dock Company, which owns and operates docks and yards at South Chicago, receives by boat and handles approximately 150,000 tons of coal per year. There have been no movements of this coal by rail for several years because, as alleged, of the high switching costs, the coal all being delivered by trucks to consumers in the Chicago district. The cost for movement by truck was stated to range from 30 cents to $1 per ton for a maximum haul of 17 miles, including delivery to the plants of the consumers. The witness testified that per-car charges of not to exceed $12, $15 and $18 for the one, two, and three-line hauls would be necessary to enable the railroads to handle this coal traffic.

Plant Refuse.—It was again urged, as in the former hearings, that plant refuse of no commercial value be accorded a lower basis than the general level of switch-

[4] See discussion on pp. 692-695 of the prior report.

ing rates in order that manufacturers might dispose of their refuse. It appears that the length of the hauls is substantially less than the average haul within the district and that the loading is heavier. On cross-examination it developed, however, that only intrastate movements are involved.

Other Commodities.—Much additional testimony was presented with respect to other commodities, including brick, petroleum products, sulphuric acid and other chemicals; crude tar from which is manufactured paving tar, roofing tar, and creosoting oil; coke, pig iron, etc. However, much of the testimony in regard thereto related to the question of the relationship between the interstate and the intrastate rates, and it will hereafter be discussed in connection with the Section 13 feature of the report.

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PRIVATE EQUIPMENT.

In the prior report, at pages 704 and 705, the commission said:

> The shippers, however, contend that the usual allowance of 1.5 cents per car-mile for road service is inequitable in the case of switching movements, due to the detention in the latter service being entirely out of proportion to the mileage made. No testimony was presented by the carriers in that connection. Clearly, it is the duty of carriers to provide reasonably adequate and suitable equipment for all traffic which they undertake to transport, and it does not necessarily follow from the mere fact that certain shippers are furnishing their own equipment that they are to be compensated therefor. It may be, and usually is, a distinct benefit and advantage to the shipper to use his own equipment. The record does not fully disclose to what extent the use of private equipment is made necessary through

failure of the carriers to maintain an adequate car supply, nor is it sufficiently comprehensive to determine what would be a fair and reasonable rental charge therefor. If the carriers and shippers should be unable to agree upon a fair charge for the use of private equipment, this feature of the case may again be brought to our attention for further hearing.

Approximately 93 per cent of the shipments made by the Standard Oil Company from their Whiting, Ind., plant to the Chicago district are in shipper-owned tank cars. The Standard Oil Company seeks reparation on all business moving interstate in their private tank cars since December 10, 1931. Their witness testified that a study made of the 1931 shipments moved into the district showed an average cost for the use of the tank cars of $5.10 per car. The record does not show the lengths of these hauls, nor the time consumed in the different movements.

The Grasselli Chemical Company, which owns and operates the American Tank Line, submitted an exhibit showing that the cost of operation per car during the year 1930 of the 710 tank cars owned by it, was $1.19 per day. They testified that the average number of days consumed in the single-line movements, both loaded and empty, was 5.7 days, for average hauls on the Indiana intrastate traffic of approximately 4 miles which, on the basis of the $1.19-cost per day results in a minimum cost of $6.78 per car. These figures, however, are based on the intrastate movements for which no allowance is made by the carriers under the existing 2-cent rate and

which, the witness urged, should be retained. On their interstate two-or-more-line movements to Illinois destinations they receive an allowance for the use of the tank

cars of 25 miles at 1.5 cents per mile, both loaded and empty.

This was the only evidence adduced at the further hearings relating to private equipment. In *Switching at St. Louis and East St. Louis, supra,* the question of the use of private equipment was discussed at length. The commission therein, at page 222 stated:

> * * * the fact that a carrier may permit shippers to furnish their own equipment does not mean that these shippers should receive compensation, unless the carrier fails to provide the necessary equipment. Whether or not it is necessary for respondent to rent equipment for the service in question is not clear. If it is necessary, our view is that the compensation to the car owner should be made through a rental charge rather than through a differential in freight rate.

It does not appear whether any or all of this private equipment was or is being used because of shipper convenience or through inability of the carriers to furnish the necessary tank cars. Notwithstanding the Commission's reference to these matters in the prior report the shippers failed to furnish the additional information at the further hearings. The record is utterly lacking in details from which a finding might be made whether reparation is due, or as to the amount thereof on any of the interstate movements in private equipment.

Chicago Heights, Ill.

Since 1907 the rates between Chicago Heights[5] and the Chicago switching district have been maintained on a parity with the rates applicable within the Chicago district. The switching at Chicago Heights is performed

[5] The history of the rates applicable between Chicago Heights and the Chicago Switching District is set forth on page 707 of the prior report.

by the Chicago Heights Terminal Transfer Railroad, a switching carrier serving practically all of the industries located at that point. Because of this fact there are no 1-line movements between Chicago Heights and the Chicago district, and the following table, therefore,

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compares the average hauls and the shortest and longest hauls for 2-line and 3-line movements with similar movements within the Chicago switching district:

	2-line movements			3-line movements		
	Average (miles)	Shortest (miles)	Longest (miles)	Average (miles)	Shortest (miles)	Longest (miles)
Within Chicago District	21.32	1.1	68.2	26.3	3.40	89.54
Between Chicago District and Chicago Heights	31.66	7.7	36.8	33.42	6.13	64.37

The Chicago Heights witness at the further hearings, as at the prior hearings, took the position that they are entitled to the same rates and should be on the same relative basis of rates as applicable within the Chicago switching district. Their shipments generally are loaded to the 60,000-pound minimum and, in many instances, much in excess of the prescribed minimum.

Minimum Weight.

While the complaint attacked the reasonableness of the 60,000 pound minimum, the witnesses, almost without exception, testified that their shipments could be loaded, and in fact in most instances were loaded, to and in excess of the 60,000-pound minimum. The paper interests, however, testified that most of their shipments moved to the Chicago switching district by truck because it was practically impossible for them to load a car to

60,000 pounds. Complainants compared this minimum with lower minima applicable on road-haul traffic between points in the Chicago switching district and points outside thereof, and also with a 50,000-pound minimum applicable within the Cleveland, Ohio, switching district. However, on brief they urge that "if the rates complained of herein be reduced complainants will waive the request for reduction in minimum, but if the rates are not reduced as a result of this complaint, then complainants ask earnestly for a reduction in the minimum to 50,000 pounds." As above stated, the evidence discloses that the traffic generally loads to and in excess

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of 60,000 pounds, and the record does not establish that the 60,000-pound minimum is unreasonable.

FINDINGS.

While considerable testimony was presented at the further hearings by various concerns, including the stone, sand, and gravel interests, the grain and grain products and coal interests, and concerns shipping primarily in tank cars, directed toward a showing that such commodities were entitled to rates lower than the present interstate all-commodity basis, the record does not disclose that the existing rates for the movements involved are unreasonably high for these or any other commodities which are moving on the all-commodity basis. Switching rates throughout the country generally move on an all-commodity or per-car basis, and because of the nature of the movements, the manner of handling, and the volume of the tonnage involved, the switching traffic is peculiarly adapted to an all-commodity basis of rates.

The commission should find that the interstate switching rates, carloads, and minimum weight applicable within the Chicago switching district and between the district and Chicago Heights, Ill., have not been shown to be unjust or unreasonable, and it is recommended that the complaint be dismissed.

The Section 13 Investigation.

Within the Chicago switching district are located more than 5,000 industries with private side tracks, and in addition numerous small manufacturers and distributors whose plants are not equipped with private side tracks. The district is honeycombed with a network of tracks and sidings over which the switching under consideration is performed. These proceedings embrace all of the 69 commodity groupings into which the traffic has been classified. In each of the groups are involved both interstate and intrastate movements. As previously stated, the interstate rates apply on an all-commodity basis, the same rate and minimum weight applying to each commodity, depending, of course, on the number of lines involved in the movements, but irrespective of dif-

ferences in the length of haul. Much of the intrastate traffic also moves on the so-called Lowrey basis. The shippers and receivers of freight within the district generally declared that the basis of rates should be the same throughout the district for interstate and intrastate movements, some contending, however, that the level should not exceed the present intrastate rates, while others urged that the same level be maintained provided the all-commodity basis would not exceed 2.5, 3, and 3.5 cents for the one, two, and three-or-more-line

movements respectively. The evidence discloses that the traffic, both interstate and intrastate, is handled in the same trains, by the same train crews, and in the same manner. The district is divided by the Indiana-Illinois State line. On each side of this line are located industries which ship and receive commodities of the same general nature. It appears that since December 10, 1931, the effective date of the increased interstate rates, many of the shippers within the district have been routing their traffic over intrastate routes whenever such routes are available in order to secure the benefit of the lower Lowrey rates of 2.5, 2.5 and 3 cents for one, two, and three-or-more-line hauls, respectively, minimum 60,000 pounds. There are however many exceptions to that basis both over and under the Lowrey rates and different minima apply. To all of these intrastate rates, however have been added the emergency 10 per cent increases effective January 11, 1932, authorized in Ex Parte No. 103, *Fifteen Per Cent Case*, 1931, 178 I. C. C. 539; 179 I. C. C. 215. The minimum per-car charges on the commodities moving on the Lowrey basis, therefore, have been increased from $15 to $16.50 for the one-line and two-line movements, and from $18 to $19.80 per car for the three-or-more-line movements, with proportionate increases on commodities not moving on the Lowrey basis. The Ex Parte 103 increases, however, were not permitted to be added to the higher interstate switching rates which became effective December 10, 1931.

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The representatives of the Illinois Commerce Commission and the Public Service Commission of Indiana stated that, inasmuch as only the commodities moving on the Lowrey basis of rates were before those commissions for deter-

mination under their suspension proceedings,[6] which were heard with the original proceeding in No. 19610, in so far as the exceptions to the Lowrey basis are concerned (other than the 10 per cent emergency increase), the carriers have made no effort to obtain approval of the State Commissions for any changes in those rates, and that no petition for reconsideration or rehearing was submitted by the carriers to either of those commissions with respect to the commodities moving on the Lowrey basis of rates. Furthermore, the witness for the grain interests stressed the fact that the bulk of grain switched within the Chicago district is between elevators located within the State of Illinois at rates not on the Lowrey basis, and that because the great preponderance of the switching movement is intrastate, and the State Commissions not having had an opportunity to pass upon the reasonableness of the intrastate grain switching rates, this commission should not invade the domain of the State authorities, particularly with respect to this traffic. Under the provisions of section 1 of the Act the commission has jurisdiction over the transportation of passengers or property only in interstate commerce. It derived its power to consider the relationship between interstate and intrastate rates, originally from section 3(1) and, since the amendment of February 28, 1920, from section 13. Paragraph (3) of section 13 provides that:

> Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation or practice, *made or imposed by*

[6] No general investigation was instituted either by the Illinois or the Indiana State Commissions at the time of the prior hearings.

> *authority of any state* * * *, the commission, before, proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding.

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The Illinois and Indiana State Commissions refused to permit the so-called Lowrey basis of rates to be increased within their respective states to the basis of the interstate all-commodity rates, which action might be held to be indicative of what the State commissions would do with respect to the exceptions to those rates if and when properly brought before them for consideration. Furthermore, if an intrastate rate voluntarily proposed by a carrier is allowed to be filed by a state commission, it is established under the laws of the State, and for this reason alone it is a rate made, though not imposed, by the authority of the State and comes within the words "made or imposed by authority of any State." *State of Florida* v. *United States*, 30 Fed. (2d) 116.

As previously indicated, one of the principal criticisms of the representatives of the Illinois and Indiana state commissions is that the traffic included in the study was not representative. In support of that statement they direct attention to the omission of the Chicago Junction Railway Company, hereinafter called the Chicago Junction, from the study, although in the month of September, 1926, that carrier handled 1,764 cars in one-line hauls as contrasted with a less number of one-line hauls on certain study roads. The Chicago Junction was not included in the cost study due to the volume of one line short haul undiversified traffic handled between packing houses on its line. Its movements range from 200 feet to a mile. It is obvious that those movements are not

representative of the intradistrict hauls generally performed within the district.[7]

In the prior report it was stated that "the shippers generally favor an all-commodity basis but most of them are opposed to any increases in their present rates." At the further hearings while still quite generally favoring

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an all-commodity basis, the shippers were practically unanimous that the basis should be no higher than the rates which were in effect prior to the December 10 increases, or the same as the effective intrastate rates. The representative of the Board of Trade of the City of Chicago, whose members deal in grain and grain products, took the position that the grain shippers did not contend for, nor agree to be included in, the all-commodity basis; that practically the entire movement of grain and the great preponderance of the movement of grain products within the switching district is intrastate, and that therefore interstate commerce is not discriminated against by the lower rates on intrastate movements of grain. Furthermore, the representatives of the various stone producers operating crushed stone plants within the switching district also urge that regardless of what rates might be found reasonable for the movement of other commodities, "the substantial difference in conditions surrounding the movement of stone, sand and gravel fully justifies such commodities being excepted and accorded a lower rate than might be properly applied on other commodities." This is con-

[7] At page 697 of the prior report the Commission stated:

"In view of the nature of these movements, most of which are purely intraplant, and all intrastate in character, over comparatively short hauls, they can not be considered as representatative of the movements in general throughout the district. We accordingly make no findings as to this particular traffic."

trary to the position taken by the same witness at the former hearings as appears from the following excerpt of his testimony:

> Our position in the former hearing was to this effect, that crushed stone, sand and gravel should take the same basis as every other commodity; but I also proposed a per-car scale of charges to be applied as an all-commodity basis. In this proceeding I take the position that we do not favor an all-commodity basis, that the present rates intrastate in Illinois, as well as interstate, are entirely too high, are more than crushed stone as a class of traffic will bear, and are forcing us to other forms of transportation.

The intrastate movements within Indiana because of the physical layout and the relatively short hauls, it is contended, are not comparable as to cost of transportation, value of service, etc., with the movements within the district as a whole. The intrastate hauls within Illinois are somewhat longer than the hauls within Indiana, but they do not approach the average of the interstate hauls, except on one-line movements. In fact,

no interstate shipper at the further hearings contended that an intrastate competitor was obtaining a similar service at a lower rate so as to occasion undue preference and prejudice as between interstate and intrastate traffic.

There has been no specific showing that competition exists as between particular interstate shippers and intrastate shippers. No producers who ship in interstate commerce appeared in support of an increase in the lower intrastate rates and, so far as the record shows, no interstate shippers are injured by it. In *Rate on Sulphuric Acid From Natrona,* 148 I. C. C. 403, at page 408, the commission said:

> When we act affirmatively under section 13, we fix or declare what are and will be reasonable interstate rates and then find upon appropriate showing of similarity in transportation conditions and competition between shippers in interstate and intrastate commerce, and considerations of carrier revenue, that the State rates, where lower, create undue prejudice to shippers in interstate commerce and undue preference of shippers in intrastate commerce, or unjust discrimination against interstate commerce, and direct the removal of such undue prejudice and preference and unjust discrimination by the establishment intrastate of the rates found or declared to be reasonable for interstate transportation.

While undue prejudice and preference may be established by a preponderance of evidence, a mere showing of a disparity of rates and general declarations as to competition or injury, unsupported by evidentiary facts, are insufficient to support a finding of undue prejudice and preference. Evidence to sustain an order finding that intrastate rates are violative of Section 13 in that they unduly prejudice persons or places must be of equal dignity and probative value as the evidence required to sustain a finding under Section 3. *Barrett Co.* v. *Atchison, T. & S. F. Ry. Co.*, 172 I. C. C. 319, 334.

In *Intrastate Rates Within Louisiana*, 164 I. C. C. 600, the commission, at page 616, said:

> No interstate shipper has testified that his profits have been curtailed through an enforced absorption of an unjustified difference in freight charges in the sale of his product, or that his business * * * has been materially lessened by reason of the intrastate rates here assailed.

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Preference and prejudice as between persons or localities does not obtain unless there is a showing that difference between the state and interstate rates is an

actual source of disadvantage to interstate traffic and a source of advantage to intrastate traffic. No shipper has made such a contention in this proceeding. The mere general showing that there are shippers in common lines of business, some of whom ship interstate and others intrastate does not constitute a sufficient showing under the act. There is no showing of specific intrastate movements on particular commodities as compared with specific interstate movements on like traffic sufficient to support a finding and order of undue preference of or advantage to shippers or localities in intrastate commerce to the undue prejudice of interstate shippers.

It was shown by witnesses for respondents that some of the railroads operating within the switching district, especially the strictly switching carriers which operate exclusively within the district, cannot move traffic from an industry located on the Indiana side of the line to an Indiana destination without operating in the State of Illinois; and likewise cannot move traffic from an industry located in Illinois going to a destination in Illinois within the district without operating in the State of Indiana. The Indiana Harbor Belt Railroad, for example, has industries located on its line served by it exclusively which are located on both sides of the Illinois-Indiana State Line, and some of the assembly yards and interchange tracks overlap the state line. Respondents witnesses testified with respect to certain industries dealing in iron and steel, animal feed and fertilizer, corn products, petroleum products, etc., whose hauls are interstate and which compete with industries located in Illinois and Indiana manufacturing the same commodities, the latter being able to ship on the lower intrastate basis of rates. While, as above stated, the testimony in-

dicates that a uniform basis of rates, both interstate and intrastate, within the Chicago switching district is

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desirable; and in a general way, that competitive conditions exist within the district, no interstate shipper presented any testimony of any specific instances of competition with intrastate shippers at the lower intrastate rates. In other words, no showing was made that any interstate shipper was damaged because his rates were higher than those contemporaneously applicable on the traffic of shippers in intrastate commerce, or that any disadvantage has resulted from the disparity of the rates. In fact, the record in No. 19610 is devoid of any shipper testimony of competition between interstate and intrastate traffic, notwithstanding the fact that during the hearings the attention of counsel for the shippers was called to the wording of the order of investigation in this connection. The record strongly suggests that the failure of any interstate shippers or manufacturers to testify in the proceeding may be accounted for in large part by the fact that most of them, having intrastate routes available, now have the benefit of the lower intrastate rates, and in part was actuated by a belief that their failure to present the necessary specific evidence of competition with intrastate traffic and shippers would ultimately result in the restoration of the prior-existing rates for interstate movements. Counsel for the shippers on brief stated:

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> No great amount of evidence on behalf of shippers was presented in this case. The carriers are seeking an order from the Interstate Commerce Commission requiring increases in state rates. *No*

shipper appeard to support the alleged claim of discrimination and prejudice against interstate and preference of intrastate traffic. The shippers who did appear sought to defend the present state rates.

Witnesses for the carriers further testified that many of the industries cannot ship to points within the district except over interstate routes and therefore must pay the interstate rates of 3, 3.5, and 4 cents for one, two and three-or-more-line hauls, respectively, while the industries which have intrastate routes available may ship on the basis of 2.5 cents for one and two-line hauls, and 3 cents for three-or-more-line hauls, carload minimum 60,000 pounds, and in some instances at lower rates, but usually with higher minima, because of the exceptions under the Lowrey rates applicable on intrastate traffic. One of respondents' exhibits shows the so-called natural or interstate, and the unnatural or intrastate routes. The witness stated that in order to develop economy and efficiency of service certain routes have been designated for the movement of certain types of traffic, and explained that the term "unnatural route," via which many industries have been routing their shipments since the December 10 increases, instead of permitting them to move via the natural interstate routes, was used because such movements take the cars against the flow of the traffic. In other words, movement over the intrastate routes in most instances requires special handling by the motive power because it is either partially or wholly in the opposite direction to the usual trend of the district traffic, which is governed by the preponderance of the traffic moving into or out of the district in connection with line hauls. This exhibit shows that during the period December 10, 1931, to March 31, 1932, 856 cars were specifically routed and moved over the lower-rated intrastate

routes which formerly would have moved over interstate routes, for which the respondents show an alleged loss in revenue of $7,656. The record discloses that in

some instances these unnatural or intrastate routes are not only shorter but involve less service. On cross-examination it developed that a considerable haul, in several instances amounting to approximately 20 miles, in connection with the so-called natural or interstate routes, could be saved by the use of more advantageously located interchange connections. A number of such movements were pointed out, and in those cases what was the natural haul over an interstate route would become the shorter haul via an intrastate route, and would involve the most economical movement. The extent of the round-about or circuitous hauls in connection with some of the so-called natural routes is disclosed in two of the illustrations shown on the exhibit where the natural or interstate routes involved hauls of 38 and 45 miles, as compared with the unnatural or intrastate hauls of only 13 and 23 miles, respectively. In this connection attention is called to the statement made in the prior report where, at page 692, the commission stated:

> The record leaves no doubt that there is need for improvement in the handling of this vast switching business, and we can not too strongly urge upon the carriers the necessity for prompt study of these conditions looking toward the elimination of unnecessarily circuitous hauls, the proper location of interchange points and classification yards, etc.

While the record indicates that some consideration was given to this feature, the carriers apparently have made little effort to comply with the commission's suggestions, and there is room for further study and much

improvement along this line. Prompt steps should be taken to effect these economies in the handling of this vast traffic throughout the district.

Exhibits submitted by the carriers indicate that since the interstate rates were increased on December 10, the percentage of intrastate movements within the district and between the district and Chicago Heights has increased. The table below compiled from these exhibits shows the ratios, in percentages, of the interstate and intrastate traffic for the week of November 9 to 15, 1931,

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prior to the effective date of the increases, as compared with the week January 11 to 17, 1932, which was subsequent to the time the interstate increases became effective:

CHICAGO SWITCHING DISTRICT TRAFFIC.

Number of lines in haul	Illinois Intrastate		Indiana Intrastate		Total Intrastate		Interstate	
	Nov. 1931	Jan. 1932	Nov. 1931	Jan. 1932	Nov. 1931	Jan. 1932	Nov. 1931	Jan. 1932
1	18.07	13.43	16.15	17.81	34.22	31.24	65.78	68.76
2	44.10	49.08	0.70	1.89	45.86	51.43	55.20	49.03
3	63.85	82.15	....	....	63.85	82.19	36.15	17.85
Composite 1, 2 and 3 line hauls	35.39	38.63	7.08	8.12	42.47	46.75	57.53	53.25

TRAFFIC BETWEEN CHICAGO AND CHICAGO HEIGHTS.

Number of lines in haul	Illinois Intrastate		Interstate	
	Nov. 1931	Jan. 1932	Nov. 1931	Jan. 1932
2	26.30	33.39	73.70	66.61
3	52.67	85.29	47.33	14.71
4	100.00	100.00	.....	.....
Composite 2, 3, and 4 line hauls	52.93	71.38	47.07	28.62

As contrasted with the above figures it appears from the table on page 679 of the original report that the interstate traffic within the district was 40.29 per cent of the entire movement in September, 1926, the Illinois intrastate movement being 53.31 per cent and the Indiana intrastate 6.40 per cent. The representatives of the Indiana Commission took the position that inasmuch as only 6 per cent of the switching traffic moves intrastate within Indiana there is no justification for increasing the rates on that traffic; furthermore, that while fifteen carriers were included in the cost study, only four[8] of them operate within Indiana, and that separate costs of those four carriers were not shown in the cost study.

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For the same month in 1926 only 24.29 per cent of the tonnage moved interstate between the Chicago switching district and Chicago Heights and 75.71 per cent moved intrastate within Illinois.

The relative lengths of the hauls of the interstate and intrastate *cost study* cars moving within the Chicago switching district are shown in the following table:

Average Hauls	Intrastate		Interstate
	Illinois	Indiana	
	Miles	Miles	Miles
One-line	14.7	6.3	15.0
Two-line	15.9	7.3	27.5
Three-line	23.4	...	34.2

From the above it appears that the Indiana intrastate average hauls are less than 50 per cent of the average Illinois intrastate hauls and that, while the Illinois in-

[8] The Pennsylvania Railroad, Elgin, Joliet & Eastern Railway, Baltimore & Ohio Chicago Terminal Railroad, and Indiana Harbor Belt Railroad.

trastate single-line average haul approximates the average one-line interstate haul, the two and three-line Illinois intrastate average hauls are considerably shorter than the interstate two and three-line average hauls. In view of this fact the representatives of the Illinois and Indiana State Commissions contend that the average costs of all traffic would not be representative of the costs of the intrastate traffic and that it, therefore, cannot be said that a lower rate on the intrastate traffic discriminates against the interstate traffic.

The following tables, also compiled from defendants' exhibits, show the present and estimated revenue based on the interstate rates separated as to intrastate traffic in Illinois and Indiana, and the estimated annual net loss, as well as the present and estimated revenue and the estimated annual net loss on the Chicago Heights traffic, for the month of September, 1926, which was the basis for the traffic test used in the original case, and also on the smaller volume of traffic moving during the period of depression, comparing the week of November 9 to 15, 1931, with the week of January 11 to 17, 1932:

WITHIN CHICAGO SWITCHING DISTRICT.

Traffic	Month of Sept., 1926	Estimated annual Net Loss	Week of Nov. 9-15, 1931	Estimated Annual Net Loss	Week of Jan. 11-17 1932	Estimated Annual Net Loss
Intrastate-Illinois—						
One Line Haul	$ 97,139.28	$1,165,671.36	$ 3,094.04	$ 266,727.59	$1,113.92	$114,837.11
Two " "	91,998.75	1,103,985.00	6,023.89	519,300.85	5,297.87	546,172.17
Three " "	34,527.06	414,324.72	1,802.50	155,387.93	2,344.51	241,702.06
Total	223,665.09	2,683,981.08	10,920.43	941,416.37	8,756.30	902,711.34
Intrastate-Indiana—						
One Line Haul	8,103.26	97,239.12	915.69	78,938.79	719.06	74,129.90
Two " "	* 249.59	* 2,995.08	* 104.23	* 8,985.34	80.90	8,340.20
Three " "	.....	.....	.....	.....	.....	.....
Total	7,853.67	94,244.04	811.46	69,953.45	799.96	82,470.10
Total Intrastate-Illinois and Indiana Combined	$231,518.76	$2,778,225.12	$11,731.89	$1,011,369.82	$9,556.26	$985,181.44

* Decrease in proposed revenue.

BETWEEN THE DISTRICT AND CHICAGO HEIGHTS.

	Month of Sept., 1926	Estimated annual Net Loss	Week of Nov. 9-15, 1931	Estimated Annual Net Loss	Week of Jan. 11-17 1932	Estimated Annual Net Loss
Intrastate-Illinois—						
Two Line Haul	$ 5,223.23	$ 62,678.76	$ 96.83	$ 8,347.41	$ 98.15	$10,118.56
Three " "	1,568.44	18,821.28	298.44	25,727.59	305.54	31,498.97
Four " "	436.04	5,232.48	140.10	12,077.59	158.71	16,361.85
Total	$ 7,227.71	$ 86,732.52	$ 535.37	$ 46,152.59	$ 562.40	$ 57,979.38

The respondents relied in large part upon such showing of the difference in revenue that would accrue to them under the present intrastate 1, 2 and 3-line rates as compared with the basis of rates found not unreasonable by the commission for interstate traffic. In arriving at the above figures it must be assumed, of course, that all of the intrastate traffic would have continued to move by rail at the higher rates. The decrease in tonnage since the September, 1926 movement is chargeable in large part to the general business depression, and in part to the diversion to motor truck movement.

Within the borders of the Chicago switching district are many improved highways and also navigable waterways which already move a substantial volume of this switching tonnage. To what extent additional tonnage would be diverted to these other agencies of transportation if the intrastate rates would be increased to the interstate basis can not definitely be determined, but the record abundantly indicates that considerable traffic would be lost to the trucks, and to some extent to the waterways and pipe lines.

The witness for the Inter-Lake Iron Corporation of Cleveland, Ohio, testified that they ship their pig iron by rail at the present intrastate rate of 40 cents per gross ton, minimum 100,000 pounds. He showed an average movement for the past five years of approximately 50,000 tons per year which produced an average yearly revenue in excess of $20,000, which revenue, acording to the witness, would be lost by the carriers if the rate would be increased.

The Grasselli Chemical Company, whose plant is located in the switching district at Grasselli, Ind., manufactures sulphuric acid and other chemicals. The com-

pany ships both interstate to Illinois and intrastate within Indiana, the preponderance of the movement being Indiana intrastate. Its witness testified that a study made by the company developed that sulphuric acid can be trucked to Indiana destinations at a cost of 31.5 cents per net ton,

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which is 8.5 cents less than the present intrastate rail rate; furthermore, that to some points pipe line deliveries can be made at 36 cents per ton, and that while his company is satisfied with the present 2-cent intrastate rate, it would not pay a rate of 3 cents.

The Barrett Company produces paving tar, roofing tar, and creosoting oil which are manufactured from crude tar. This crude tar is now moved by rail, but its traffic manager testified that the material can be handled by barge at a rate less than 2.5 cents, and that if this intrastate rate is increased the rail carriers will lose all of the traffic.

The witness for one of the crushed stone producers testified that his company had practically discontinued shipping crushed stone within the district by rail; that the emergency increases on the intrastate rates had diverted additional intrastate tonnage to the trucks, and that any further increases in those rates would result in loss of revenue to the carriers because the small remaining tonnage would be handled by truck or barge.

In *Wisconsin R. R. Comm.* v. *C. B. & Q. R. R. Co.*, 257 U. S. 563, the Supreme Court, at page 586, stated:

> When we turn to paragraph 4, section 13, however, and find the commission for the first time vested with a direct power to remove "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce," it is impossible to escape the dovetail relation between that provision

and the purpose of Section 15a. If that purpose is interfered with by a disparity of intrastate rates, the commission is authorized to end the disparity by directly removing it, because it is plainly an "undue, unreasonable or unjust discrimination against interstate or foreign commerce," within the ordinary meaning of those words.

And in *Florida* v. *United States,* 282 U. S. 194, at pages 211 and 214, it said:

> In construing the statute this court has held that the general provision of section 13(4) prohibiting "unjust discrimination against interstate commerce" and authorizing the commission to establish intrastate rates to prevent such discrimination, is to be read in connection with section 15a, both of which were added by Transportation Act, 1920 * * *. The authority granted by section 13(4) is thus to be considered in the light of the affirmative duty of the Commission to fix rates and to take other important steps to maintain an adequate na-

> tional railway system.
>
> As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the Act requires that intrastate traffic shall pay "a fair proportionate share" of the cost of maintenance. And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it. * * * In considering the authority of the commission to enter the state field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question is that of the relation of rates to income. The raising of rates does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it, by discouraging patronage. * * *
>
> The commission made no findings as to the rev-

enue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service.

The record does not indicate that an increase in the intrastate rates to the level of the interstate rates would result in increased revenues to the carriers. The testimony shows that the existing competition by motor truck is material, and indicates that this means of transportation will be utilized to a greater extent if the intrastate rates are increased, and also that some tonnage would be diverted to barges and pipe lines. Furthermore, the preponderance of the intra-district movement is intrastate, and there is but a slight margin between the existing intrastate and interstate rates. Certain of the intrastate rates, due to exceptions to the Lowrey basis, are on a higher level than the present interstate rates. The carriers show the difference between the total revenues which would be derived if the existing intrastate rates and the interstate rates were applied to the same volume of traffic. They rested their case primarily upon this showing to prove a violation of Section 13. But this is neither convincing nor adequate proof that an increase in the intrastate rates to the interstate basis would result in an increase in total revenue as there are present the other factors mentioned

above which would tend to decrease the volume of traffic sufficiently at least to offset any additional revenue which otherwise might be gained by an increase in the rates.

The commission should find that the maintenance of

intrastate rates and carload minimum weights on a lower basis than the corresponding rates and minimum weights, found not unreasonable and approved for interstate transportation in switching service, has not been shown to result in unjust discrimination against interstate commerce or in undue preference and advantage of persons and localities in intrastate commerce nor in undue prejudice and disadvantage to persons and localities in interstate commerce.

APPENDIX C.

18829

INTERSTATE COMMERCE COMMISSION

No. 19610[1]

SWITCHING RATES IN CHICAGO SWITCHING DISTRICT

Submitted April 28, 1933. Decided July 3, 1933

1. Interstate all-commodity switching rates, in carloads, applicable within the Chicago switching district and between the district and Chicago Heights, found not unreasonable. Complaint dismissed.
2. The maintenance of intrastate switching rates and carload minimum weights in Illinois and Indiana within the Chicago switching district and between the district and Chicago Heights lower than the corresponding interstate rates not shown to be unduly prejudicial to interstate shippers or localities, but to result in unjust discrimination against interstate commerce. Unjust discrimination ordered removed. Prior report, 177 I. C. C. 669.

J. N. Davis, H. I. Allen, J. R. Barse, D. P. Connell, P. F. Gault, James Stillwell, H. D. Sheean, E. A. Smith, J. F. Connors, H. W. Schaffer, B. M. Hamilton, J. F. Cummins, H. R. Wilkinson, and *J. F. Dooley* for railroads serving Chicago switching district.

G. W. Hufsmith and *O. R. Livinghouse* for Public Service Commission of Indiana; and *G. H. Shafer* for Illinois Commerce Commission.

Luther M. Walter, J. S. Brown, Herbert J. Campbell, J. P. Haynes, J. B. Humphrey, R. B. Coapstick, R. I. Pierce, C. B. Cardy, M. S. Allison, C. E. Hoople, G. R. Gordon, W. J. Hammond, H. G. Brown, C. Kuhn, H. H. Singer, W. D. Lindsay, Harry C. Ames, S. L. Felton, John W. Bingham, H. L. Burkhart, Frank L. Sullivan, A. C. Hultgren, F. H. Belden, J. J. Low, G. N. Staat, L. A. Behrle, R. S. Waterbury, Wilbur LaRoe, Jr., H. G. Legan, C. D. Miller, A. Rundal, J. J. Schmicker, W. J. Womer, J. M. Campbell, Ralph Edgar Riley, Lloyd L. Thomas, C. T. Stripp, Alex Stuart, Charles A. Shank, William A. Moore, F. M. Garland, J. L. Roberts, E. S. Gubernator, and *G. W. Cole* for complainants, interveners, and other parties.

REPORT OF THE COMMISSION ON FURTHER HEARING

BY THE COMMISSION:

Exceptions to the report proposed by the examiners were filed by the respondents in no. 19610, and by the complainants in no. 24950, to which certain of the parties replied, and the case was orally argued.

[1] This report also embraces No. 24950, Acme Steel Company et al. v. Atchison, Topeka & Santa Fe Railway Company et al.

Our conclusions in no. 19610 differ from those proposed by the examiners.

In the prior report, 177 I. C. C. 669, decided July 31 ,1931, upon general investigation we found that the switching rates proposed by respondents of 3 cents per 100 pounds for 1-line hauls, 3.5 cents for 2-line hauls, and 4 cents for 3-or-more-line hauls, carload minimum 60,000 pounds, would not be unreasonable for the future for application within the Chicago switching district, and prescribed rates not in excess thereof to be published on an all-commodity basis, except railway equipment on its own wheels. The same rates were found not unlawful for application between Chicago Heights, Ill., and the Chicago switching district, except insofar as they might be in conflict with the findings in No. 16116, *Indiana State Chamber of Commerce* v. *A., T. & S. F. Ry. Co.*, 122 I. C. C. 81. The maintenance clause of no. 16116, however, since has been vacated. At the time of the prior proceedings there was pending before the Illinois Commerce Commission its Docket No. 17250, which involved the lawfulness of the schedules filed by Illinois carriers proposing to increase the so-called Lowrey[2] rates applicable intrastate in the Chicago switching district in Illinois to the same basis as proposed for interstate application, and also before the Public Service Commission of Indiana, its Docket No. 8939, proposing similar increases in the Indiana intrastate switching rates. These cases were heard jointly with the general investigation in no. 19610. No specific finding was made or order entered as to the Illinois and Indiana intrastate rates but, at page 711 of the report, we stated:

> A large percentage of the traffic under consideration is intrastate in character, but the record does not disclose any difference in the conditions surrounding the handling of the interstate and intrastate movements. In the hope that both the Illinois Commerce Commission and the Public Service Commission of Indiana will bring their rates in harmony with the conclusions herein, no specific finding or order with regard to intrastate rates will be entered at this time.

Subsequently, on August 26, 1931, both the Illinois and Indiana State commissions found that the carriers had failed to justify the

[2] The Lowrey basis of rates is described on page 676 of the original report as follows: "During 1910 a joint committee was organized composed of shippers and carriers with the object of establishing some uniformity in the local switching rates. After many conferences various differences were harmonized and an agreement was entered into, since known as the Lowrey agreement, which was translated into an all-commodity tariff, effective August 1, 1911, establishing uniform individual and joint rates on all commodities with a few exceptions, such as coal, coke, and grain. The exception as to coal and coke was removed in June, 1927. The so-called all-commodity rates published under the Lowrey agreement were 1.5 cents for 1-line and 2-line hauls, and not to exceed 0.5 cent for each additional line haul, minimum 60,000 pounds. Due to the general increases and reduction in rates since 1911 the present all-commodity rates are 2.5 cents for 1-line and 2-line hauls, and 3 cents for 3-or-more line hauls, as compared with the proposed rates of 3, 3.5, and 4 cents, respectively, minimum 60,000 pounds."

increased rates proposed, and required their cancelation as of November 10, 1931. The respondent carriers, therefore, on September 10, 1931, filed a motion seeking appropriate findings and order authorizing and requiring them upon the record as made to establish the same switching rates to apply intrastate within Illinois and Indiana as were found reasonable for interstate application. Thereupon, on November 2, 1931, we reopened the proceedings for further hearing with respect to the relation of the rates and charges for switching in intrastate commerce to the rates prescribed for like switching in interstate commerce for the purpose of determining whether the adjustment of the interstate and intrastate rates and charges is unduly prejudicial to interstate shippers and traffic and unjustly preferential of intrastate shippers and traffic, or unjustly discriminatory against interstate commerce, in violation of section 13 of the Interstate Commerce Act, with a view to the entry of such order or orders as may be necessary to correct such violation or violations as may be found to exist.

A petition filed on behalf of various interests within the switching district seeking to have the order set aside and to reopen the case for further hearing was denied on October 12, 1931. Thereupon on December 28, 1931, the complaint of the Acme Steel Company was filed, attacking the interstate rates which became effective on December 10, 1931, in compliance with our decision in no. 19610, hereinafter referred to as the prior report. The motion of defendants to dismiss the complaint without hearing and their request for oral argument on the motion were overruled. The complaint accordingly was docketed as no. 24950, (listed in the margin in footnote 1), and assigned for hearing. The two cases were heard separately, but in order to prevent repetition and to conserve the records it was stipulated that any pertinent or relative testimony in the record in one case should be considered as part of the record in the other case. Separate briefs were required to be filed, but in view of the nature of the testimony and the conclusions reached, the examiners issued a consolidated report. Appropriate notice of hearings was served upon the authorities of the States of Illinois and Indiana.

Rates herein are stated in cents per 100 pounds unless otherwise noted.

COMPLAINT CASE

In no. 24950 the complainant corporations, engaged in various lines of industry with plants located in the Chicago switching district and at Chicago Heights, by complaint filed December 28, 1931, allege that the interstate switching rates applicable to carload traffic

between points in the Chicago switching district and between points in that district and Chicago Heights, which became effective December 10, 1931, in conformity with the findings in the prior report, of 3 cents for 1-line, 3.5 cents for 2-line, and 4 cents for 3-or-more-line hauls, and the minimum of 60,000 pounds, are greater than the traffic will bear, and were and are unjust and unreasonable, in violation of section 1 of the act. Reasonable rates for the future and reparation are sought. However, at the hearing and on brief complainants recognized that "it is now, under the recent decision of the Supreme Court in the *Arizona Grocery case* impossible for the Commission to award reparation by reason of damages due to the publication and application of rates found reasonable by the Commission." But reparation is sought by the shippers for the use of their privately owned tank cars.

The State commissions of Illinois and Indiana filed a joint petition of intervention. Intervening petitions also were filed by various other interests.

The facts set forth in the prior report will be repeated herein only to the extent necessary for clarification. The history of the switching rates within the district is discussed on page 676 thereof. The so-called all-commodity rates published under the Lowrey agreement, as subsequently changed by the general increases and reductions, became 2.5 cents for 1-line and 2-line hauls, and 3 cents for 3-or-more-line hauls, minimum 60,000 pounds, which, as above stated, on December 10 were increased to 3 cents, 3.5 cents and 4 cents, respectively, minimum 60,000 pounds.

COST STUDY

The details of the cost study, the formula used in connection therewith, and the criticisms of the carriers, the shippers, and the representatives of the Illinois and Indiana State commissions were set forth at length in the prior report. Similar criticisms were again advanced at the further hearings. The defendants submitted no additional cost data. Complainants point out that the prior record was closed on September 21, 1928, and contend that the test periods within which the unit costs were determined should have been made on all of the 35 switching carriers operating within the district, and for a longer and more recent period of time in order to bring the study down to date. Generally, their criticisms suggest greater refinement in arriving at the unit costs. They stated that the transportation, operating, traffic, and competitive conditions have changed, those now obtaining and which will prevail in the future being substantially different from the conditions which existed during the past five years.

Complainants contend that the entire district should have been zoned as to expenses and investment, and the expenses and return on investment local to each zone allocated thereto, in order that the average costs assigned to switching movements would represent the expenses and return on investment only of the zones through which each car actually moved. To some extent this would also differentiate between heavy and light locomotives where the service in a particular zone required one type to the exclusion of the other. Complainants specify maintenance expenses which were not allocated to the particular place where the expense was incurred by the study roads. These expenses, however, were confined to the lines of the study road which incurred them. Complainants would eliminate any element of expense incurred at a particular place from an average cost applied elsewhere. They point to switching by the carriers at industries where the tracks are owned and maintained by the industries, but the element of maintenance incurred by the study roads on their own lines was represented in the average cost assigned to cars switched at industries. This subject was considered in the prior report. The total cost under such formula would not have been reduced, and the unit costs, which in any event cannot be definitely ascertained, would merely have been increased in certain zones and reduced in others.

Defendants apportioned a part of general expenses to switching on basis of the amount of other allocated expenses. Complainants object to that basis on the ground that it gives to every dollar expended for labor, material, and miscellaneous expenses the same weight, despite the fact that a constant relationship is not always present between expenses directly assignable to the various operations or between those expenses and general expenses. While the relationships which complainants refer to are not constant, nevertheless the basis used is generally recognized as equitable to determine costs in various lines of business. It is used for the apportionment of unassignable general expenses in our rules governing the separation of operating expenses between freight service and passenger service on large steam railways, effective since January 1, 1920.

The formula provides for the distribution of 67 expense accounts. The remaining expense accounts are so-called optional accounts. Any allotment of the latter depends upon whether they bear any relationship to switching movements on the individual road. The switching roads distributed all accounts due to their service, being entirely switching. It was found that the amount distributed from the 67 accounts on switching roads bore a ratio of approximately 90.8 per cent to the total distributed from all accounts. The trunk lines adopted that ratio to expand the amount they had distributed

from the 67 accounts to the equivalent of a distribution of all accounts. Complainants assert that there was no justification for the foregoing procedure on the ground that the trunk lines are not comparable with the purely switching roads. Their position is that a 1-line haul would be charged on the same basis as a 3-line haul, and an intradistrict movement on the same basis as a movement in connection with a line haul. This statement is somewhat vague in view of the fact that the record clearly indicates that under like conditions there are no different services required in the switching of a car in connection with a line haul than in an intradistrict movement other than either the initial or final terminal service. The same may be said in comparing a 1-line haul with a 3-line haul in an intradistrict movement, but in this case there would be two interchanges required in the 3-line haul and none in the 1-line haul. In each case the cars would be charged only for the respective services rendered. The use of the factor to increase the distributed expenses to include a portion of the so-called optional accounts had the effect of distributing that portion to switching on basis of the distributed expenses.

In apportioning maintenance of tracks the carriers under a provision in the cost-finding formula computed 3 miles of yard track as the equivalent of 1 mile of main line. No maintenance of main-line track was included in the costs. The costs arrived at and presented in the original hearing reflected only the maintenance of yard tracks in accordance with that equation. Complainants direct attention to that provision and state that if the equation had been made it would have decreased the switching cost. This allegation appears to be without foundation.

Complainants show the total investment in road and equipment of nine switching carriers operating in the district, as well as the Commission's valuation, together with the average rate of return of 7.89 per cent for the seven years ended December 31, 1931. They compare it with the rate of return of 5.66 per cent for the year ended December 31, 1931. These data are based upon total investment and income. The return on investment devoted to the intradistrict switching under review is not shown. No convincing conclusion with regard to the return from intradistrict switching can be drawn from these totals.

In the prior report, at page 711, we said:

> The ascertainment of the cost of performing a particular service is always beset with serious difficulties, and this is particularly true in connection with switching costs within an area as congested as the Chicago switching district, which presents a complicated network of rail lines probably not equaled in any other section of the country. The cost study presented herein is perhaps

more exhaustive than any heretofore undertaken in any proceeding involving switching charges. Considering these facts and the further fact that all of the parties, both shippers and carriers, were practically unanimous in contending for the establishment of an all-commodity basis to apply throughout the Chicago switching district, it appears that the rates proposed for the one, two, and three-or-more line movements are not excessive.

At the further hearings herein the representatives of the State commissions again took the position, similar to the position of the shippers, that the increased rates had not been justified; and that the evidence as to cost taken in connection with the 1926 traffic analysis, the hearings having been closed in 1928, should be brought down to date to reflect the present-day changed conditions. Some of the changed conditions enumerated since the prior record was closed are (1) falling off in volume of traffic, (2) improvement in the highways within the district resulting in diversion of much additional tonnage from the rail lines for movement by truck, (3) the decline in value of many of the articles or commodities transported, (4) reduction in wages and cost of supplies, and (5) curtailment in the amount of service rendered by the carriers to the industries within the district. These matters against were stressed by counsel for complainants at the oral argument. The record discloses that some of the commodity prices are on a lower level than prevailed at the time of the prior hearings, and that there has been a falling off in tonnage within the district since the prior hearings. The witness for one of the brick-manufacturing concerns with plants within and outside the switching district, but in the vicinity of Chicago, testified that in 1926 they shipped approximately 400,000,000 bricks to points within the district, but that in 1931 the number dropped to approximately 18,000,000 bricks. Both periods being prior to the effective date of the interstate increases the loss in tonnage, of course, is not attributable to the increases in the interstate rates. Other witnesses testified to the decreased tonnage which has been moving since the close of the prior hearings, and much evidence was adduced which indicates that competition by truck has become more acute. However, this reduction in the volume of tonnage is by no means chargeable to truck competition alone, but as indicated above, may be attributed in large part to, and is indicative of, the then generally prevailing downward trend of business throughout the country. This is demonstrated by the following testimony of one of the witnesses:

Industries, generally, and particularly the iron and steel industry, are buying proportionately less raw materials, which is reflected in the unit volume purchased. In other words, where commodities, in the past, might be purchased in multiples of carloads, a single carload or less carload would suffice for imme-

diate delivery. These conditions lend themselves admirably to handling by truck. * * * What has been stated in connection with raw materials will apply with equal force to the finished products shipped to the Chicago switching district.

Much of the testimony submitted in regard to truck competition related particularly to the heavy-loading commodities, such as crushed stone, sand and gravel, brick and coke; and reference also was made to movements by boat and pipe line. An attempt was made to show the actual costs of movements by truck, but the figures differ widely, depending in part on whether the trucks are owned and operated by the shippers, and partly whether the movement was in contract trucks. The witness for one of the oil-shipping concerns testified that deliveries by truck to eight of their stations would effect a saving of an average of $9.41 per car. A concern handling coke stated that the cost of shipping the coke in its trucks amounted to 18 cents per ton for a haul of approximately 4.5 miles, which they compared with the interstate rail rate for the 2-line movement of 70 cents. The witness interested in the movement of crude tar stated that they could handle their traffic by barge at a rate less than 2.5 cents, and that if this intrastate rate is increased the rail carriers would lose all of the traffic. The witness for the concern manufacturing sulphuric acid and other chemicals testified that sulphuric acid can be trucked to its Indiana destinations at a cost of 31.5 cents per ton, which is 8.5 cents less than the present intrastate rate on this commodity, and that, to some points, pipe-line deliveries can be made at 36 cents per ton.

The evidence discloses that with respect to some traffic the carriers could not make rates low enough to regain the traffic from the trucks to the rail lines. It appears that because of the location of the particular buildings under construction at off-track points, the material would of necessity have to be trucked for some distance even though the initial movement would be by rail. In those instances it is clear that it is impossible for the rail lines to compete with the movement by truck under any basis of rates. Furthermore, we may not lawfully require reductions in rates below a reasonable level in an effort to keep traffic upon the rail lines or to meet motor-truck or water competition. In *Southern Class Rate Investigation*, 100 I. C. C. 513, at page 611, we said:

In fixing maximum reasonable rates, competition is not a factor which we may take into consideration. The carriers may, within limits, make low rates for the purpose of meeting competition, but we are without power to compel them to meet it.

The defendants offered no evidence in the complaint case. They took the position that the only issue involved is whether the rates established in conformity with our order violate section 1 of the act, and that since the Commission, upon a complete record which involved the reasonableness of the rates herein attacked, has entered its report and order, and rates in accordance therewith having been made effective on December 10, 1931, they were warranted in relying on the report and order made in the original case, the complaint having been filed but 13 days subsequent to the effective date of the new rates, and that there was presented no evidence or facts new or different from the facts previously of record. On brief they contend that the only difference between the conditions which existed at the time the evidence in the original case was taken and at the time of the further hearings was the substantial decrease in the volume of traffic due to the general economic depression. The carriers call attention to the decision in *Pacific Mutual Door Co.* v. *A. A. R. R. Co.*, 101 I. C. C. 633, wherein at page 634, division 3 said:

> Defendants take the position that we are not bound by our former decision; and they, therefore, ask that the present case be decided on its merits. When a given situation has been fully considered and deliberately passed upon, that decision ought not to be disregarded and the question kept open indefinitely unless good cause is shown for the adoption of a different course. The first step in the proceeding upon which complainant relies, was a complaint filed January 14, 1914. Since then several hearings have been had and decisions rendered bearing upon the situation. Since the report of January 16, 1923 * * * defendants and interveners have petitioned for rehearing, but that was denied. The evidence introduced by them in this case is substantially similar to that introduced in the record of the decided case. The present record does not furnish a sufficient reason for setting aside the previous finding of unreasonableness.

They urge that this language is appropriate and should be here adopted.

The carriers further contend that the decrease in tonnage has resulted in increasing their unit costs due to the fact that units of traffic have greatly decreased, with no opportunity to reduce operating expenses correspondingly on account of the irreducible minimum having been reached. In other words, a decrease in volume of traffic unaccompanied by a proportionate decrease in operating expenses would cause unit costs to increase rather than diminish. And a reduction in total operating expenses alone will not support a conclusion that the present interstate rates should be adjusted downward under present traffic conditions.

The following table, compiled from exhibits submitted in support of their contention that the unit cost in handling cars in the Chicago

district has increased since the close of the original record in this case, depicts the situation for the years 1928 to 1931 with respect to the eight switching carriers[3] included in the cost study:

Operating expenses	Averages per car handled			
	1928	1929	1930	1931
Maintenance of way and structures	$0.56	$0.53	$0.60	$0.53
Maintenance of equipment	.63	.65	.66	.63
Traffic	.03	.03	.04	.04
Transportation	2.48	2.50	2.56	2.62
General	.166	.17	.20	.22
Total operating expenses	3.86	3.88	4.06	4.04
Tax accruals	.48	.51	.45	.61
Total operating expense and tax accruals	4.34	4.39	4.51	4.65
Operating ratio (percent)	(66.97)	(67.70)	(72.35)	(74.11)

From the above it appears that the total operating expenses per car handled increased from $3.86 in 1928 to $4.04 in 1931. At the oral argument, however, complainants' counsel called attention to the showing of record that the average cost per car handled by the various switching roads for the year 1931 was less than the average cost for the 6-year period ended with 1931.

Defendants' exhibits further show that the total operating revenues for the same switching roads referred to above, but including the Chicago River & Indiana Railroad, for the year 1931 were approximately $10,500,000 less than for the year 1928, whereas the total operating expenses in 1931 for the same roads were only $5,500,000 less than in 1928. The carriers also urge that all of the proper and necessary railroads have not been made defendants, the Elgin, Joliet & Eastern Railroad and the Chicago Heights Terminal Transfer Railroad not being named as defendants. All industries in Chicago Heights, except one, are located on the latter line. The rates applicable from Chicago Heights to points within the Chicago switching district are published in an agency tariff as joint rates to which the Chicago Heights Terminal Transfer Railroad is a party, and in view of the conclusions herein reached, further discussion of this matter appears unnecessary.

Comparison was made in the prior report of the rates applicable within the district with the scales of rates prescribed for road-haul movements in various cases, including No. 17000, Part 6, *Iron and Steel Articles*, 155 I. C. C. 517. We therein prescribed a scale of rates for application throughout official territory on a large list of iron and steel articles, the scale commencing with 6 cents for 5 miles and under. Subsequently the carriers voluntarily reduced these inter-

[3] Baltimore & Ohio Chicago Terminal Railroad, Belt Railway of Chicago, Indiana Harbor Belt Railroad, Chicago & Illinois Western Railroad, Chicago Short Line Railway, Chicago, West Pullman & Southern Railroad, Illinois Northern Railway and Pullman Railroad.

state iron and steel rates for short hauls up to 100 miles, beginning with 3 cents, instead of 6 cents, for the 5-mile block. The rate for the 15 to 20 mile block, which represents the average haul within the switching district, is 5.25 cents. Based on the carload minimum of 40,000 pounds this latter rate produces a minimum carload revenue of $21. The average loading of iron and steel articles, however, is considerably in excess of the prescribed minimum, averaging approximately 65,000 pounds per car. *Iron and Steel Articles, supra.* Based on the latter weight the line-haul revenue under the 5.25-cent rate would be in excess of $34 per car. One of complainants' witnesses submitted an exhibit showing the minimum revenue per car derived under the interstate switching rates applicable in the Chicago district and between the district and Chicago Heights, as compared with the minimum per car revenue derived from rates applicable on road-haul traffic on 82 different commodities for single-line and joint-line hauls between Illinois, Indiana, and Wisconsin points. Under the 60,000-pound minimum prescribed the revenue for the one, two and three-or-more-line switching movements is shown to be $18, $21, and $24 per car for average hauls of 13.19, 21.32, and 26.53 miles respectively, within the district, and 31.66 miles for 2-line and 33.42 miles for 3-line hauls between the district and Chicago Heights, as compared with minimum per car revenues for the road-haul movements ranging from $12 to $24 under carload minima ranging from 14,000 to 30,000 pounds, for hauls of 11 to 183 miles. The witness, however, was not familiar with the extent of the movements under those rates, nor was the average loading shown for any of the commodities with which comparison was made. That witness contended for rates of 2.5, 3, and 3.5 cents, minimum 60,000 pounds, to apply on all commodities moving both interstate and intrastate within the Chicago switching district and between the district and Chicago Heights. On oral argument counsel representing most of the complainants contended that per car charges, based on the present intrastate rates plus the emergency charges, of $16.50 for the 1-line and 2-line hauls and $19.80 for 3-or-more-line hauls would be maximum reasonable charges for both interstate and intrastate movements.

The witness for the Lehigh Portland Cement Company and the Marquette Cement Manufacturing Company, with plants located at Oglesby, Ill., in the LaSalle, Ill., switching district, stated that prior to December 10, 1931, following the decision in *Atlas Portland Cement Co.* v. *C., B. & Q. R. R. Co.*, 81 I. C. C. 1, the rate on cement from Buffington, Ind., to Chicago, 22 miles was 6.5 cents, and that the contemporaneous rate from LaSalle, 96 miles distant from Chi-

cago, was 8 cents, but that, effective with the docket 19610 increases, the Elgin, Joliet & Eastern Railroad canceled its line-haul rates and published in lieu thereof the switching rates which became effective within the Chicago district. This had the effect of increasing the spread, Oglesby over Buffington, to 5.8, 5.3, and 4.6 cents respectively, for the one, two, and three-line movements from Buffington. This witness urged that any findings which would further reduce the rates on cement should specifically exclude the Buffington to Chicago rate. Under the scale prescribed in *Atlas Portland Cement Co., supra*, the rate for 20 miles, carload minimum 50,000 pounds, was 7 cents, resulting in a minimum charge of $35 per car. The shippers further call attention to the fact that the E., J. & E. is not a member of the Chicago switching committee in the Chicago district; that prior to December 10, 1931, it published its rates as line-haul rates which had been on the basis of 5 cents and 6.5 cents, but that effective on that date this carrier published the switching basis of rates, thus voluntarily shrinking its revenues and which further resulted in reduced divisions to the Chicago district carriers.

The fifth-class rate prescribed in the eastern class-rate revision, is 11 cents for 5 miles and 12 cents for 20 miles, and the sixth-class rate is 8 cents for 5 miles and 9 cents for 20 miles.

Various operating officials of the different carriers directing these switching movements in the Chicago district testified that the traffic is handled in a manner similar to the road-haul traffic, and that the operation of the switching trains is comparable to road-haul operations. The business is moved in regular transfer trains consisting of cars for both interstate and intrastate movements, operated under full crews with the air coupled up and supplied with cabooses, and both road-haul and switching business is handled in the same trains. This testimony is substantiated by the witness for the Inland Steel Company who stated:

> Traffic handled in switching service within the Chicago switching district, to or from the plants of the Inland Steel Company, is accorded identically the same service as road-haul cars that are received from or destined to points outside the district. These cars move in the same trains between the plant and the break-up yards of the Indiana Harbor Belt, and this is the same manner in which traffic was handled during the cost study period of 1927.

Complainants voice objection to any comparison of switching rates with rates prescribed for line-haul movements, apparently on the ground that the cost of performing switching service is less than the cost involved in line-haul movements. In *Stiglow Bros. Co. v. C. & N. W. Ry. Co.*, 52 I. C. C. 339, it was recognized that a switching

service, especially where congestion prevails, is more expensive than a road haul for a like distance.

COMPARISON WITH RATES IN OTHER SWITCHING DISTRICTS

Much testimony was offered to show that charges for switching in other switching districts, such as Buffalo, N. Y., Cincinnati, Cleveland and Toledo, Ohio, Detroit, Mich., Pittsburgh and Erie, Pa., St. Louis, Mo., and Duluth, Minn., are substantially lower than the rates applying in the Chicago district for similar switching service. These witnesses stated that the Chicago district, due to the absence of grades, curves, tunnels, and expensive bridges, permits maximum trainload movements, as contrasted with the topography of the Cincinnati, Pittsburgh and St. Louis switching districts "where there are heavy grades, tunnels, and expensive bridges indicating costly switching operation performed at lower rates than apply in the Chicago district in addition to higher maintenance costs." In *Switching at St. Louis and East St. Louis*, 120 I. C. C. 216, at page 217, in referring to the St. Louis switching district, we said: "The switching is done over practically level terrain." On brief, complainants—

insist that the Commission should measure the reasonableness of the switching rates complained of by comparing them with switching rates in other territories the differences in transportation conditions considered * * *.

No cost figures, however, were submitted to show the actual costs of handling the traffic in the compared districts. Neither was any attempt made to compare the average hauls in those districts with the average hauls within the Chicago district. In *Increased Switching Charges at Detroit*, 91 I. C. C. 82, at page 83, the switching hauls in the Detroit switching district are stated to range from 0.5 to 20 miles, with an average haul of about 8 miles. Certainly not any of the compared districts approach the magnitude of the Chicago district, which is approximately 40 miles in length and from 7 to 15 miles wide, comprising over 600 square miles. This area contrasted, for example, with the Pittsburgh switching district in which the maximum haul does not exceed 10 miles, may not fairly be said to be a comparable district. Nor is any reference made to the relative property values per mile of road in Chicago, as contrasted, for example, with the Toledo, Erie, and other switching districts referred to.

Complainants refer to our second supplemental report in Docket No. 21723, *Container Service*, 185 I. C. C. 787, decided July 11, 1932, calling particular attention to the following statement:

Since our original decision the conditions of transportation confronting the railroads generally have been subjected to material change. The volume of

traffic moved has radically decreased. Despite the unprecedented decrease in the volume of traffic generally, the number of trucks competing with the railroads and the intensity of that competition have materially increased. The transportation conditions affecting the respondents today were not in contemplation by us at the time of the original decision.

They urge that in the instant case we likewise should take cognizance of the inroads being made by competing transportation agencies and require a reduction in the rates under consideration. Attention, however, is directed to the fact that in the second supplemental report in the *Container case*, we did not require reductions in the rates of any carrier to meet competition by motor trucks. We merely suspended the effective date of our order to enable respondents which might desire to continue the use of container service to "have the same freedom of opportunity to meet truck competition" as is being practiced by other respondents. In other words, in the *Container case* the carriers petitioned for modification of the prior order so as to permit them to meet competition by truck. In the instant case, however, the carriers are defending the reasonableness of the rates under attack. The switching rates of 3, 3.5, and 4 cents for the one, two, and three-line hauls, respectively, which were approved in the prior report, are maximum reasonable rates. If the carriers find it necessary, because of truck or other competition, to meet such competitive conditions they are free to depart from these maximum rates, provided such departures will not result in undue preference or prejudice.

TRUCKING COSTS

Some of the carriers have contracts with truck companies for trucking between various stations within the switching district, for which they pay charges ranging from 5 cents for 1.5 miles to 15 cents per 100 pounds for 17 miles, but these charges do not include loading or unloading. Comparison was made of the similarity of the trucking conditions within Chicago and the St. Louis, Mo., districts. It appeared that a cost study made within the St. Louis district developed road-haul costs of $1.014 per ton for average hauls of 2.13 miles, and that with the addition of the loading and unloading charges, clerical costs, etc., the total cost for an average load of 6.4 tons amounted to $1.56 per ton. Repondents submitted these figures to show that an increase in the intrastate rates to 60 cents, 70 cents, and 80 cents per ton for one, two, and three-or-more line hauls, respectively, would not cause diversion of the intrastate traffic to the trucks. On the other hand, considerable testimony was offered by the shippers which indicates that their shipments

can be, and are being moved by truck at lower costs than under the rail rates. One of the witnesses for one of the brick concerns which owns and operates its own trucks testified that, taking into consideration the loading and unloading charges, it costs 65 cents per ton more to ship by rail than if moved by truck. The cost of handling the brick under consideration by truck for 16 miles was stated to be 97.5 cents per ton. In this, as in many other instances, however, the tonnage was destined to a nonrail point, which would have necessitated some movement by truck in addition to the rail haul.

SPECIFIC COMMODITIES.

Much testimony was adduced on behalf of various parties interested in the rates on particular commodities, not only with respect to the level of the rates, but also in regard to competing transportation facilities, the decrease in the volume of the movement, etc.

Sand, gravel, and crushed stone.—The witnesses on behalf of the sand, gravel, and crushed-stone industries testified that a large percentage of this business is now moving by truck, and that the truck movement is rapidly increasing; also that the movement by water for the past two or three years has been substantial. One of the witnesses contended that there has been a material change in the transportation, sale, and distribution of stone since the prior hearings. He stated that stone at that time was sold on the basis of about 80 cents per ton at the quarry, but that the price gradually dropped to about 52 cents per ton in 1931, due in part to the keener competition and in part to the curtailed demand for the product. Among the reasons advanced by these interests for seeking a lower basis of rates than on the other commodities were (1) movement in greater volume, (2) the low value of the product, (3) movement in open-top cars, (4) absence of loss and damage claims, and (5) that the average haul is shorter than on other commodities. It appears that of the total deliveries of stone made in 1930 only 14.4 per cent moved by truck, but that in 1931 the truck deliveries had increased to 18.3 per cent, and that for the first four months of 1932 the movements by truck had increased to 31.2 per cent of the total deliveries. While these interests at the prior hearings contended for per car charges of $20, $25, and $30 for one, two and three-line movements, respectively, at the further hearings they contended that those rates would not attract the business, and urged that rates of $15, $20, and $25 for minimum cars of 100,000 pounds capacity should be established. At the oral argument they took the position that rates of $12, $15, and $20 per car for the respective hauls would be necessary to restore the movements to the railroads. Stone produced within the district

comes into competition with gravel and sand moving in from points outside of the district. In the prior report, at page 698, we said:

> The producers of crushed stone also assert that gravel is produced and shipped largely from nearby points outside of the district which are located on trunk lines able to make local delivery, and that the points of production of crushed stone within the district are located on switching roads which require a connecting-line delivery. In other words, gravel now moves from nearby points outside of the district on single-line rates of 65 cents per ton, while the crushed stone referred to now moves within the district on 2-line switching rates of 50 cents per ton which, under the proposed adjustment, would be increased to 70 cents per ton, resulting in a spread of 5 cents over the gravel rates.
>
> The producers of crushed stone within the district are in accord with the general plan of a uniform rate basis and expressly discountenance a zoning plan, because of the discrimination which they allege generally results therefrom. Despite those views they suggest a different scale of rates per car on their commodity, as follows:

Weight	One line (per car)	Two line (per car)	Three line (per car)
60,000 pounds	$12	$15	$18
80,000 pounds	16	20	24
100,000 pounds	20	25	30

The adoption of the above scale would be a departure from either the present or proposed Lowrey basis. It would result in a decrease in the present 1-line charge and decreases in all charges under the proposed all-commodity basis. It would aggravate an alleged prejudicial situation, general in its scope, said by outside producers to exist now in favor of the present switching district rates as compared with the rates into the district from Zones I, II and III.* Furthermore, its adoption would result in an unwarranted inconsistency within the district rate structure itself. Clear justification for any departures from the all-commodity basis is peculiarly necessary in this case in view of the fact that a uniform all-commodity basis of rates is desired by shippers and carriers alike, eliminating all consideration of the usual factors of distance, volume, loading, value, etc. Such a structure should be applied in the light of its reciprocal nature. To attempt to equalize advantages and disadvantages in specific instances by variations in the rates tends to defeat the purpose and intent of the structure itself.

Grain and grain products.—The Board of Trade of the City of Chicago filed a separate brief in defense of the rates on grain and grain products. In general the representative of the board adhered to the position taken in the original case; that is, that there is no substantial evidence to support the finding of reasonableness with respect to the grain switching rates. He stated that while grain products present certain problems which do not arise with re-

* Zones I, II and III embrace points within 50, 51 to 100, and 101 to 150 miles from Chicago, respectively. The corresponding 1-line rates are 65, 70, and 75 cents, and the connecting-line rates are 85, 90, and 95 cents on basis of net tons. *Chicago Gravel Co.* v. *I. H. B. R. R. Co.*, 146 I. C. C. 101.

spect to the other commodities they are "in a sense bound up with * * * the other commodities," but strongly urged that the grain[4] switching rates differed materially from those affecting the rates with respect to grain products. He contends that the Lowrey or all-commodity basis was from the outset a contractual relation to which the grain interests were not a party, and that by mutual agreement the grain rates were carried as an exception to the Lowrey basis. Similarly, a number of other commodities were not included in the Lowrey agreement and were accorded a different basis of rates.

Coal.—The South Chicago Coal & Dock Company, which owns and operates docks and yards at South Chicago, receives by boat and handles approximately 150,000 tons of coal per year. There have been no movements of this coal by rail for several years because, as alleged, of the high switching costs, the coal all being delivered by trucks to consumers in the Chicago district. The cost for movement by truck was stated to range from 30 cents to $1 per ton for a maximum haul of 17 miles, including delivery to the plants of the consumers. The witness testified that per car charges of not to exceed $12, $15, and $18 for the one, two, and three-line hauls would be necessary to enable the railroads to handle this coal traffic.

Plant refuse.—It was again urged, as in the former hearings, that plant refuse of no commercial value should be accorded a lower basis than the general level of switching rates in order that manufacturers might dispose of their refuse. It appears that the length of the hauls is less than the average haul within the district and that the loading is heavier. On cross-examination it developed, however, that only intrastate movements are involved.

Other commodities.—Much additional testimony was presented with respect to other commodities, including brick; petroleum products; sulphuric acid and other chemicals; crude tar from which is manufactured paving tar, roofing tar, and creosoting oil; coke; pig iron; etc. However, much of the testimony in regard thereto related to the question of the relationship between the interstate and the intrastate rates, and it will be hereinafter discussed in connection with the section 13 feature of the report.

PRIVATE EQUIPMENT

In the prior report, at pages 704 and 705, we said:

> The shippers, however, contend that the usual allowance of 1.5 cents per car-mile for road service is inequitable in the case of switching movements, due to

[4] See discussion on pp. 692-695 of the prior report.

the detention in the latter service being entirely out of proportion to the mileage made. No testimony was presented by the carriers in that connection. Clearly, it is the duty of carriers to provide reasonably adequate and suitable equipment for all traffic which they undertake to transport, and it does not necessarily follow from the mere fact that certain shippers are furnishing their own equipment that they are to be compensated therfor. It may be, and usually is, a distinct benefit and advantage to the shipper to use his own equipment. The record does not fully disclose to what extent the use of private equipment is made necessary through failure of the carriers to maintain an adequate car supply, nor is it sufficiently comprehensive to determine what would be a fair and reasonable rental charge therefor. If the carriers and shippers should be unable to agree upon a fair charge for the use of private equipment, this feature of the case may again be brought to our attention for further hearing.

Approximately 93 per cent of the shipments made by the Standard Oil Company from their Whiting, Ind., plant to the Chicago district are in shipper-owned tank cars. The Standard Oil Company seeks reparation on all business moving interstate in their private tank cars since December 10, 1931. Their witness testified that a study made of the 1931 shipments moved into the district showed an average cost for the use of the tank cars of $5.10 per car. The record does not show the lengths of these hauls, nor the time consumed in the different movements.

The Grasselli Chemical Company, which owns and operates the American Tank Line, submitted an exhibit showing that the cost of operation per car during the year 1930 of the 710 tank cars owned by it, was $1.19 per day. They testified that the average number of days consumed in the single-line movements, both loaded and empty, was 5.7 days, for average hauls on the Indiana intrastate traffic of approximately 4 miles which, on the basis of the $1.19 cost per day results in a minimum cost of $6.78 per car. These figures, however, are based on the intrastate movements for which no allowance is made by the carriers under the existing 2-cent rate and which, the witness urged, should be retained. On their interstate two-or-more-line movements to Illinois destinations they received an allowance for the use of the tank cars of 25 miles at 1.5 cents per mile, both loaded and empty.

This was the only evidence adduced at the further hearings relating to private equipment. In *Switching at St. Louis and East St. Louis, supra*, it was pointed out that:

* * * the fact that a carrier may permit shippers to furnish their own equipment does not mean that these shippers should receive compensation, unless the carrier fails to provide the necessary equipment. Whether or not it is necessary for respondent to rent equipment for the service in question is not clear. If it is necessary, our view is that the compensation to the car owner should be made through a rental charge rather than through a differential in freight rate.

It does not appear whether any or all of this private equipment was or is being used because of shipper convenience, or through inability of the carriers to furnish the necessary tank cars. Notwithstanding our reference to these matters in the prior report the interested shippers failed to furnish the additional information at the further hearings. The record is utterly lacking in details from which a finding might be made whether reparation is due, or as to the amount thereof on any of the interstate movements in private equipment.

CHICAGO HEIGHTS, ILL.

Since 1907 the rates between Chicago Heights[5] and the Chicago switching district have been maintained on a parity with the rates applicable within the Chicago district. The switching at Chicago Heights is performed by the Chicago Heights Terminal Transfer Railroad, a switching carrier serving practically all of the industries located at that point. Because of this fact there are no 1-line movements between Chicago Heights and the Chicago district. The following table compares the average hauls and the shortest and longest hauls for 2-line and 3-line movements with similar movements within the Chicago switching district.

	2-line movements			3-line movements		
	Average	Shortest	Longest	Average	Shortest	Longest
	Miles	*Miles*	*Miles*	*Miles*	*Miles*	*Miles*
Within Chicago district	21.32	1.1	68.2	26.53	3.40	89.54
Between Chicago district and Chicago Heights	31.66	7.7	36.8	33.42	6.13	64.3

The Chicago Heights witnesses at the further hearings, as at the prior hearings, took the position that they are entitled to the same rates and should be on the same relative basis of rates as applicable within the Chicago switching district. Their shipments generally are loaded to the 60,000-pound minimum and, in many instances, much in excess of the prescribed minimum.

MINIMUM WEIGHT

While the complaint attacked the reasonableness of the 60,000-pound minimum, the witnesses, almost without exception, testified that their shipments could be loaded, and in fact in most instances were loaded, to and in excess of the 60,000-pound minimum. The paper interests, however, testified that most of their shipments moved

[5] The history of the rates applicable between Chicago Heights and the Chicago switching district is set forth on page 707 of the prior report.

to the Chicago switching district by truck because it was practically impossible for them to load a car to 60,000 pounds. Complainants compared this minimum with lower minima applicable on road-haul traffic between points in the Chicago switching district and points outside thereof, and also with a 50,000-pound minimum applicable within the Cleveland, Ohio, switching district. However, on brief they urge that "if the rates complained of herein be reduced complainants will waive the request for reduction in minimum, but if the rates are not reduced as a result of this complaint, then complainants ask earnestly for a reduction in the minimum to 50,000-pounds." As above stated, the evidence discloses that the traffic generally loads to and in excess of 60,000 pounds, and the record does not establish that the 60,000-pound minimum is unreasonable.

FINDINGS

While considerable testimony was presented at the further hearings by various concerns, including the stone, sand, and gravel interests, the grain and grain products and coal interests, and concerns shipping primarily in tank cars, directed toward a showing that such commodities were entitled to rates lower than the present interstate all-commodity basis, the record does not disclose that the existing rates for the movements involved are unreasonably high for these or any other commodities which are moving on the all-commodity basis. Switching throughout the country generally is performed on an all-commodity or per car basis, and because of the nature of the movements, the manner of handling, and the volume of the tonnage involved, the switching traffic is peculiarly adapted to an all-commodity basis of rates.

We find that the assailed interstate switching rate of 3 cents per 100 pounds for 1-line hauls, 3.5 cents for 2-line hauls, and 4 cents for 3-or-more-line hauls, and the carload minimum weight of 60,000 pounds, applicable within the Chicago switching district and between the district and Chicago Heights, Ill., are not unjust or unreasonable. The complaint accordingly will be dismissed.

SECTION 13 INVESTIGATION

Within the Chicago switching district are located more than 5,000 industries with private sidetracks, and in addition numerous small manufacturers and distributors whose plants are not equipped with private sidetracks. The district is honeycombed with a network of tracks and sidings over which the switching under consideration is performed. These proceedings embrace all of the 69 commodity groupings into which the traffic has been classified. In each of the

groups are involved both interstate and intrastate movements. As previously stated, the interstate rates apply on an all-commodity basis, the same rate and minimum weight applying to each commodity, depending, of course, on the number of lines involved in the movements, but irrespective of differences in the length of haul. Much of the intrastate traffic also moves on the so-called Lowrey basis. The shippers and receivers of freight within the district generally declared that the basis of rates should be the same throughout the district for interstate and intrastate movements, some contending, however, that the level should not exceed the present intrastate rates, while others urged that the same level be maintained provided the all-commodity basis would not exceed 2.5, 3, and 3.5 cents for the one, two, and three-or-more line movements respectively. The evidence discloses that the traffic, both interstate and intrastate, is handled in the same trains, by the same train crews, and in the same manner. The district is divided by the Indiana-Illinois State line. On each side of this line are located industries which ship and receive commodities of the same general nature. It appears that since December 10, 1931, the effective date of the increased interstate rates, many of the shippers within the district have been routing their traffic over intrastate routes whenever such routes are available in order to secure the benefit of the lower Lowrey rates of 2.5, 2.5, and 3 cents for one, two, and three-or-more line hauls, respectively, minimum 60,000 pounds. There are, however, exceptions to that basis, both over and under the Lowrey rates, and different minima apply. To all of these intrastate rates, there has been added the emergency 10 per cent increase effective January 11, 1932, following our decision in Ex parte 103, *Fifteen Per Cent Case, 1931*, 178 I. C. C. 539; 179 I. C. C. 215; 191 I. C. C. 361. The minimum per car charges on the commodities moving on the Lowrey basis, therefore, have been increased from $15 to $16.50 for the 1-line and 2-line movements, and from $18 to $19.80 per car for the 3-or-more-line movements, with proportionate increases on commodities not moving on the Lowrey basis. The Ex parte 103 increases, however, were not permitted to be added to the higher interstate switching rates which became effective December 10, 1931.

The representatives of the Illinois Commerce Commission and the Public Service Commission of Indiana stated that, inasmuch as only the commodities moving on the Lowrey basis of rates were before those commissions for determination under their suspension proceedings,[6] which were heard with the original proceeding in no. 19610, insofar as the exceptions to the Lowrey basis are con-

[6] No general investigation was instituted either by the Illinois or the Indiana State commissions at the time of the prior hearings.

cerned (other than the 10 per cent emergency increase), the carriers have made no effort to obtain approval of the State commissions for any changes in those rates, and that no petition for reconsideration or rehearing was submitted by the carriers to either of the State commissions with respect to the commodities moving on the Lowrey basis of rates. Furthermore, the witness for the grain interests stressed the fact that the bulk of grain switched within the Chicago district is between elevators located within the State of Illinois at rates not on the Lowrey basis, and that because the great preponderance of the switching movement is intrastate, and the State commissions not having had an opportunity to pass upon the reasonableness of the intrastate grain switching rates, this commission should not invade the domain of the State authorities, particularly with respect to this traffic. Paragraph 3 of section 13 of the act provides that:

> Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation or practice, *made or imposed by authority of any state* * * *, the commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding.

The Illinois and Indiana State commissions refused to permit the so-called Lowrey basis of rates to be increased within their respective States to the basis of the interstate all-commodity rates, which action might be considered to be indicative of what the State commissions would do with respect to the exceptions to those rates if and when brought before them for consideration. Furthermore, if an intrastate rate voluntarily proposed by a carrier is allowed to be filed by a State commission, it is established under the laws of the State, and for this reason alone it is a rate made, though not imposed, by the authority of the State and comes within the words "made or imposed by authority of any State." *Florida* v. *United States*, 282 U. S. 194.

As previously indicated, one of the principal criticisms of the representatives of the Illinois and Indiana State commissions is that the traffic included in the study was not representative. In support of that statement they direct attention to the omission of the Chicago Junction Railway Company, hereinafter called the Chicago Junction, from the study, although in the month of September, 1926, that carrier handled 1,764 cars in 1-line hauls as contrasted with a less number of 1-line hauls on certain study roads. The Chicago Junction was not included in the cost study due to the volume of 1-line short-haul undiversified traffic handled between packing houses on its line. Its movements range from 200 feet to a mile. It is obvious

that those movements are not representative of the intradistrict hauls performed within the district.[7]

In the prior report it was pointed out that "the shippers generally favor an all-commodity basis but most of them are opposed to any increases in their present rates." At the further hearings while still quite generally favoring an all-commodity basis, the shippers were practically unanimous that the basis should be no higher than the rates which were in effect prior to the December 10 increases, or the same as the effective intrastate rates. The representative of the Board of Trade of the city of Chicago, whose members deal in grain and grain products, took the position that the grain shippers did not contend for, nor agree to be included in, the all-commodity basis; that practically the entire movement of grain and the great preponderance of the movement of grain products within the switching district is intrastate, and that therefore interstate commerce is not discriminated against by the lower rates on intrastate movements of grain. Furthermore, the representatives of the various stone producers operating crushed-stone plants within the switching district also urge that, regardless of what rates might be found reasonable for the movement of other commodities, "the substantial difference in conditions surrounding the movement of stone, sand and gravel fully justifies such commodities being excepted and accorded a lower rate than might be properly applied on other commodities." This is contrary to the position taken by the same witness at the former hearings.

It was shown by witnesses for respondents that some of the railroads operating within the switching district, especially the strictly switching carriers which operate exclusively within the district, cannot move traffic from an industry located on the Indiana side of the line to an Indiana destination without operating in the State of Illinois, and likewise cannot move traffic from an industry located in Illinois going to a destination in Illinois within the district without operating in the State of Indiana. The Indiana Harbor Belt Railroad, for example, has industries located on its line served by it exclusively which are located on both sides of the Illinois-Indiana State line, and some of the assembly yards and interchange tracks overlap the State line. Respondents' witnesses testified with respect to certain industries dealing in iron and steel, animal feed and fertilizer, corn products, petroleum products, etc., whose hauls are interstate and which compete with industries located in Illinois and

[7] At page 697 of the prior report it was stated: "In view of the nature of these movements, most of which are purely intraplant, and all intrastate in character, over comparatively short hauls, they cannot be considered as representative of the movements in general throughout the district. We accordingly make no findings as to this particular traffic."

Indiana manufacturing the same commodities, the latter being able to ship on the lower intrastate basis of rates. As above stated, the testimony indicates that a uniform basis of rates, both interstate and intrastate, within the Chicago switching district is desirable, that the traffic is handled in the same trains, and in a general way, that competitive conditions exist within the district, but no interstate shipper presented any testimony of any specific instances of competition with intrastate shippers at the lower intrastate rates. In other words, no showing was made that any interstate shipper was injured because his rates were higher than those contemporaneously applicable on the traffic of shippers in intrastate commerce, or that his business has been materially lessened by reason of the disparity of the rates. In fact, the record in no. 19610 is devoid of any shipper testimony of competition between interstate and intrastate traffic, notwithstanding the fact that during the hearings the attention of counsel for the shippers was called to the wording of the order of investigation in this connection. But the record strongly suggests that the failure of any interstate shippers or manufacturers to testify in the proceeding may be accounted for in large part by the fact that most of them, having intrastate routes available, now have the benefit of the lower intrastate rates, and in part was actuated by the hope and belief that their failure to present the necessary specific evidence of competition with intrastate traffic and shippers would ultimately result in the restoration of the prior existing rates for interstate movements. Counsel for the shippers on brief stated:

> No great amount of evidence on behalf of shippers was presented in this case. The carriers are seeking an order from the Interstate Commerce Commission requiring increases in state rates. *No shipper appeared to support the alleged claim of discrimination and prejudice against interstate and preference of intrastate traffic.* The shippers who did appear sought to defend the present state rates.

Witnesses for the carriers further testified that many of the industries cannot ship to points within the district except over interstate routes and therefore must pay the interstate rates of 3, 3.5, and 4 cents for one, two, and three-or-more-line hauls, respectively, while the industries which have intrastate routes available may ship on the basis of 2.5 cents for 1-line and 2-line hauls, and 3 cents for 3-or-more-line hauls, in carloads minimum 60,000 pounds, and in some instances at lower rates, but usually with higher minima, because of the exceptions under the Lowrey rates applicable on intrastate traffic. One of respondents' exhibits shows the so-called natural or interstate, and the unnatural or intrastate routes. The witness stated that in order to develop economy and efficiency of service certain routes have been designated for the movement of certain types

of traffic, and explained that the term "unnatural route", via which many industries have been routing their shipments since the December 10 increases, instead of permitting them to move via the natural interstate routes, was used because such movements take the cars against the flow of the traffic. In other words, movement over the intrastate routes in most instances requires special handling by the motive power because it is either partially or wholly in the opposite direction to the usual trend of the district traffic, which is governed by the preponderance of the traffic moving into or out of the district in connection with line hauls. This exhibit shows that during the period December 10, 1931, to March 31, 1932, 856 cars were specifically routed and moved over the lower rated intrastate routes which formerly would have moved over interstate routes, for which the respondents show an alleged loss in revenue of $7,656. The record discloses that in some instances these unnatural or intrastate routes are not only shorter but involve less service. On cross-examination it developed that a considerable haul, in several instances amounting to approximately 20 miles, in connection with the so-called natural or interstate routes, could be saved by the use of more advantageously located interchange connections. A number of such movements were pointed out, and in those cases what was the natural haul over an interstate route would become the shorter haul via an intrastate route, and would involve the most economical movement. The extent of the round-about or circuitous hauls in connection with some of the so-called natural routes is disclosed in two of the illustrations shown on the exhibit where the natural or interstate routes involved hauls of 38 and 45 miles, as compared with the unnatural of intrastate hauls of only 13 and 23 miles, respectively. In this connection attention is called to the statement made in the prior report where, at page 692, it is stated:

> The record leaves no doubt that there is need for improvement in the handling of this vast switching business, and we cannot too strongly urge upon the carriers the necessity for prompt study of these conditions looking toward the elimination of unnecessarily circuitous hauls, the proper location of interchange points and classification yards, etc.

While the record indicates that some consideration was given to this feature, the carriers apparently have made little effort to comply with these suggestions, and there is opportunity for further study and much improvement along this line. Prompt steps should be taken to effect these economies in the handling of this vast traffic throughout the district.

Exhibits submitted by the carriers indicate that since the interstate rates were increased on December 10, the percentage of intrastate movements within the district and between the district

and Chicago Heights has increased. The table below compiled from these exhibits shows the ratios, in percentages, of the interstate and intrastate traffic for the week of November 9 to 15, 1931, prior to the effective date of the increases, as compared with the week January 11 to 17, 1932, which was subsequent to the time the interstate increases became effective:

Chicago switching district traffic	Illinois intrastate		Indiana intrastate		Total intrastate		Interstate	
	Nov. 1931	Jan. 1932	Nov. 1931	Jan. 1932	Nov. 1931	Jan. 1932	Nov. 1931	Jan. 1932
One-line hauls	18.07	13.43	16.15	17.81	34.22	31.24	65.78	68.76
Two-line hauls	44.10	49.08	0.70	1.89	44.80	50.97	55.20	49.03
Three-line hauls	63.85	82.15	...	...	63.85	82.15	36.15	17.85
Composite one, two, and three line hauls	35.39	38.63	7.08	8.12	42.47	46.75	57.53	53.25

Traffic between Chicago and Chicago Heights	Intrastate		Interstate	
	Nov. 1931	Jan. 1932	Nov. 1931	Jan. 1932
Two-line hauls	26.30	33.39	73.70	66.61
Three-line hauls	52.67	85.29	47.33	14.71
Four-line hauls	100.00	100.00	...	...
Composite two, three, and four line hauls	52.93	71.38	47.07	28.62

As contrasted with the above figures it appears from the table on page 679 of the original report that the interstate traffic within the district was 40.29 per cent of the entire movement in September, 1926, the Illinois intrastate movement being 53.31 per cent and the Indiana intrastate 6.40 per cent. The representatives of the Indiana commission took the position that inasmuch as only a comparatively small percentage of the switching traffic moves intrastate within Indiana there is no justification for increasing the rates on that traffic; furthermore, that while 15 carriers were included in the cost study, only 4 of them[8] operate within Indiana, and that separate costs of those 4 carriers were not shown in the cost study. For the same months in 1926 only 24.29 per cent of the tonnage moved interstate between the Chicago switching district and Chicago Heights and 75.71 per cent moved intrastate within Illinois.

The intrastate movements within Indiana, because of the physical layout and the relatively short hauls, it is contended, are not comparable as to cost of transportation, value of service, etc., with the movements within the district as a whole. The intrastate hauls within Illinois are longer than the hauls within Indiana, and the average length of the 1-line hauls within Illinois approximates the

[8] The Pennsylvania Railroad, Elgin, Joliet & Eastern Railway, Baltimore & Ohio Chicago Terminal Railroad, and Indiana Harbor Belt Railroad.

average 1-line interstate hauls, although the average hauls for 2-line and 3-line interstate movements exceed the average intrastate hauls, as appears from the following table which shows the relative lengths of the hauls of the interstate and intrastate "cost-study" cars moving within the Chicago switching district:

Average hauls	Illinois *Miles*	Intrastate, Indiana *Miles*	Interstate *Miles*
One line	14.7	6.3	15.0
Two lines	15.9	7.3	27.5
Three lines	23.4	..	34.2

In view of this showing of differences in the average lengths of the hauls as between interstate and intrastate movements the representatives of the Illinois and Indiana State commissions contend that the average costs of all traffic are not representative of the costs of the intrastate traffic and that it, therefore, cannot be said that the lower rates on the intrastate traffic for the shorter distances discriminate against the interstate traffic. Switching charges differ from line-haul rates in that they are ordinarily not graded in accordance with either the value of the commodity moved or the distance of movement. As a rule they apply to any haul within the switching district no matter how long or how short it may be, subject to the qualification that a haul to or from a connecting line may take a lower charge than a haul complete in itself. *Boston Wool Trade Asso.* v. *Director General*, 69 I. C. C. 282, 294. Switching charges are largely based on average conditions. In every switching district there will almost invariably be found some hauls so long and so difficult that the cost is in excess of the switching charge collected, but that fact does not show the charge to be less than reasonable, for the question is whether the carrier is receiving adequate compensation for the total switching service rendered within the district. *Rochester Switching Case*, 95 I. C. C. 30, 45. And in *Switching at St. Louis and East St. Louis*, *supra*, we said:

> One of the protestants contends that there should be graded rates on these commodities based on distance. But distance is not necessarily a controlling factor in switching costs. The time consumed in rendering the service is more important. In this connection it may be observed that respondent's cost study indicates that the cost of switching cars from Ewing Avenue to one of the protestant's nearest places of business is greater than to its farther-distant location. Moreover, for various practical reasons, it is desirable that switching rates be on somewhat of a postage-stamp basis.

Furthermore the intrastate hauls within the district range from a fraction of a mile to 54 miles, and there are interstate hauls also which range from a fraction of a mile to 68 miles, with one haul

shown of approximately 89 miles. It thus follows that there are many individual intrastate hauls which are longer than many of the interstate hauls. From the outset, as previously stated, the interested parties, with few exceptions, favored an all-commodity basis, and practically all parties were of one accord that one level of rates should apply throughout the district on both interstate and intrastate movements, but coupled generally with the proviso that the level of the rates should not exceed the intrastate basis. The very nature of such rates applying, as they do, within this homogeneous industrial district and, with minor exceptions, on an all-commodity basis, involves, to a large extent, disregard for distance.

The carriers show a constructive annual loss in revenue resulting from the lower intrastate rates required to be maintained under the orders of the Illinois and Indiana State commissions. This loss is measured by the difference between the revenue which would have accrued on the intrastate traffic of September 1926 under interstate rates as increased December 10, 1931, and the prevailing intrastate rates. The traffic moving in September 1926 is used as representative because it was the basis for the cost data presented in the original case. The estimated annual difference in revenue within Illinois amounts to $2,683,981, within Indiana $94,244, and between the Chicago switching district and Chicago Heights $86,732, a total of $2,864,957, which the carriers contend is the amount by which interstate commerce would be unduly burdened under normal business conditions. Studies also were made of the difference in revenue between the interstate and intrastate rates based on the traffic moving during the weeks of November 9 to 15, 1931, and January 11 to 17, 1932. These two weeks represent periods prior and subsequent to the December 10, 1931, interstate increases. Based on the intrastate switching traffic moving within the district for the week of November 9 to 15 there is shown a difference in revenue of $11,731 per week, or an estimated annual loss of $1,011,369; on the basis of the traffic for January 11 to 17 the difference would amount to $9,556 per week, or an estimated annual loss of $985,181. Based on the traffic which moved intrastate between the district and Chicago Heights for the week of November 9 to 15 the difference in revenue would amount to $535, or an estimated annual loss of $46,152; and for the period January 11 to 17 there is shown a loss of $562, or a net annual loss of $57,979. These constructive differences amount annually to $1,057,521 based on the traffic handled during the week of November 9 to 15, and to $1,043,160 based on the traffic moving during the period January 11 to 17.

The respondents relied in large part upon such showing of the difference in revenue under the present intrastate 1-line, 2-line, and

3-line rates as compared with the revenue that would accrue to them under the basis of rates found reasonable for interstate traffic. In arriving at the above figures respondents assumed that all the intrastate traffic would have continued to move by rail at the higher rates. This is not a fair assumption. There has been a considerable decrease in tonnage since September 1926. While the major part of that decline undoubtedly is chargeable to the general business depression, in part it is due to the diversion of traffic to motor trucks. Within the Chicago switching district there are many improved highways and also certain navigable waterways which handle a substantial volume of tonnage that otherwise would move by rail. The witnesses for certain industries testified that any increases in the present intrastate rates on their commodities, which included pig iron, paving and roofing tar, sulphuric acid and other chemicals, crushed stone, and others, would divert the tonnage to motor trucks, pipe lines, or barges. However, having in mind that the average single-line intrastate haul in Illinois is nearly 15 miles and in Indiana 6.3 miles; that highway traffic conditions in the Chicago district are congested, involving material delays in the movements of trucks; that the differences between the intrastate and interstate rates at present are generally for single-line hauls only $1.50, and $3 after expiration of the emergency increases; and also that a very large proportion of the intrastate traffic is handled in 1-line movements, we are not convinced that any substantial proportion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if the rates found reasonable for interstate traffic are applied thereto.

In *Florida* v. *United States*, *supra*, the Supreme Court, at pages 211 and 214, said:

> In construing the statute this court has held that the general provision of section 13(4) prohibiting "unjust discrimination against interstate commerce" and authorizing the commission to establish intrastate rates to prevent such discrimination, is to be read in connection with section 15a, both of which were added by Transportation Act, 1920 * * *. The authority granted by section 13(4) is thus to be considered in the light of the affirmative duty of the Commission to fix rates and to take other important steps to maintain an adequate national railway system.
>
> As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the Act requires that intrastate traffic shall pay "a fair proportionate share" of the cost of maintenance. And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it. * * * In considering the authority of the commission to enter the state field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question is that of the relation of rates to income.

The raising of rates does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it, by discouraging patronage. * * *

The commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service.

FINDINGS

While the evidence shows that the existing competition by motor truck is material, and indicates that this means of transportation will be utilized to a greater extent if the intrastate rates are increased, and that therefore, some additional tonnage in all probability will be lost to trucks, or diverted to barge and pipe-line movement, the record nevertheless is convincing that the carriers will derive a substantial increase in revenue if the intrastate rates are increased to the interstate basis, and we so find.

We further find that the transportation conditions throughout the Chicago switching district are substantially similar; that they are not more favorable for intrastate movements than for interstate movements between the switching district and Chicago Heights; that the maintenance of intrastate switching rates and carload minimum weights in Illinois and Indiana between points within the Chicago switching district for 1-line, 2-line, and 3-or-more-line movements, and between that district and Chicago Heights on a lower basis than the corresponding all-commodity rates and minimum weights for 1-line, 2-line, and 3-or-more-line movements, found not unreasonable and approved for interstate transportation in switching service, has not been shown to have caused or to cause any undue preference and advantage of persons or localities in intrastate commerce, or any undue prejudice and disadvantage to persons or localities in interstate commerce, but that the maintenance of such lower intrastate rates results, and will for the future result in unjust discrimination against interstate commerce.

While the above findings include Chicago Heights, we will not enter a section 13 order with respect to the relation of the interstate and intrastate rates and charges on traffic moved between the Chicago switching district and Chicago Heights, for the reason that the motion filed by respondents only sought appropriate findings and order "authorizing, requiring and directing the railroads to publish contemporaneously with the publication of the rates on interstate traffic the same rates on intrastate traffic in the States of Illinois and Indiana *within the Chicago switching district.*" (Italics supplied.)

The order issued thereupon accordingly reopened only Docket No. 19610, which was an investigation into the lawfulness of the rates and charges for switching within the Chicago switching district, the Chicago Heights feature in the prior report having been covered by the suspension proceeding in I. and S. Docket No. 2900. At the further hearings the examiners called attention to the fact that technically there was no section 13 issue for determination with respect to the Chicago Heights-Chicago district rates, but that no objection had been interposed to the submission of the Chicago Heights exhibits or to the testimony offered in regard thereto, and that the Chicago Heights interests at the prior hearing desired to stand or fall with the rates which would be prescribed within the district. Thereupon the representative for the Chicago Heights interests specifically stated that they still maintained the same position, and the representatives of the Illinois commission interposed no objection. It is apparent, therefore, that it was generally understood that the Chicago Heights section 13 matter was thus brought in issue, but because it was not included in the order reopening the proceedings for further hearing we will not enter a specific order therein. Attention, however, is again directed to the following statement appearing at page 710 of the prior report:

> Considering all the facts of record it is evident that the present rates are too low and that rates somewhat in excess of the corresponding 2-line and 3-or-more-line rates within the district will not be unreasonable for application between Chicago Heights and the Chicago switching district. But inasmuch as there is no proposal on the part of the respondents serving Chicago Heights to establish any higher rates than apply within the district, and no showing on the part of shippers within the district that the maintenance of district rates to and from Chicago Heights will result in undue prejudice to them and undue preference of Chicago Heights, we will make no finding herein which would require higher rates between Chicago Heights and the Chicago switching district.

Appropriate orders will be entered.

FARRELL, *Chairman*, dissenting in part:

I dissent from the majority's conclusion that unjust discrimination against interstate commerce results from the fact that the Indiana and Illinois intrastate switching rates involved are somewhat lower than the interstate switching rates covered by the majority report, because, in my opinion, these disparities in rates, as shown by statements of fact included in the report, are justified by differences in the transportation services, performed by the carriers, to which the rates are applied.

I am authorized to state that COMMISSIONER AITCHISON joins in this expression.

U. S. Government Printing Office: 1933

ORDERS.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 3rd day of July, A. D. 1933.

No. 19610.

Switching Rates in the Chicago Switching District.

This case being a proceeding instituted by the Commission upon motion filed by various common carriers operating in the States of Illinois and Indiana within the Chicago switching district, and having been duly heard and submitted by the parties and full investigation having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

And it appearing, That the respondent carriers parties hereto having published all-commodity 1-line, 2-line and 3-or-more-line switching rates and minimum weights for application to interstate transportation in switching service in the Chicago switching district which comply with the Commission's findings in the prior report in Docket No. 19610, *Switching Rates in Chicago District*, 177 I. C. C. 669, but continue to publish for intrastate application to similar traffic in 1-line, 2-line, and 3-or-more-line movements in the Chicago switching district within the States of Illinois and Indiana switching rates and minimum weights which are upon a substantially lower basis:

It is ordered, That respondents herein, according as they participate in the transportation be, and they are hereby, notified and required to cease and desist on or before September 20, 1933, from practicing the unjust discrimination found in said report to exist in relation of interstate and

intrastate all-commodity switching rates and charges for transportation in switching service in the Chicago switching district within the States of Illinois and Indiana.

It is further ordered, That said respondents according as they participate in the transportation, be, and they are hereby, notified and required to establish on or before September 20, 1933, and thereafter to maintain switching rates and charges on an all-commodity basis for switching service in intrastate commerce in the Chicago switching district within the States of Illinois and Indiana which shall be not less than the rates contemporaneously applied by said carriers to the transportation by them of all commodities in interstate switching service between points in the Chicago switching district in the States of Illinois and Indiana.

And it is further ordered, That this order shall remain in force until the further order of this Commission.

No. 24950

Acme Steel Company et al.

v.

Atchison, Topeka & Santa Fe Railway Company et al.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

(Seal.)

GEORGE B. MCGINTY,
Secretary.

APPENDIX D.

BEFORE THE

Interstate Commerce Commission

SWITCHING RATES IN THE CHICAGO SWITCHING DISTRICT. } Docket No. 19610.

PETITION OF ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION OF INDIANA, ACME STEEL COMPANY, ET AL., (COMPLAINANTS IN DOCKET 24950), BOARD OF TRADE OF THE CITY OF CHICAGO, INTERVENERS HEREIN, FOR REOPENING FOR FURTHER HEARING, FOR SETTING ASIDE OF ORDER OF JULY 3, 1933, FOR REARGUMENT AND/OR RECONSIDERATION.

ILLINOIS COMMERCE COMMISSION,
B. F. LINDHEIMER, Chairman,
CHARLES E. BYRNE,
ANDREW OLSON,
ERNEST J. KRUETGEN,
Commissioners.
By IRVIN ROOKS,
Its Attorney.

PUBLIC SERVICE COMMISSION OF INDIANA,
PERRY McCART, Chairman,
MOIE COOK,
S. L. TRABUE,
Commissioners, Public Service Commission of Indiana.
PHILIP LUTZ, Jr.,
Attorney General of Indiana.
By G. W. HUFSMITH,
Assistant Attorney General of the State of Indiana,
Attorneys for Public Service Commission of Indiana.

BOARD OF TRADE OF THE CITY OF CHICAGO,
By HERBERT J. CAMPBELL,
Its Attorney.

ACME STEEL COMPANY, et al.,
(Complainants, Docket 24950),
By LUTHER M. WALTER,
JOHN S. BURCHMORE,
NUEL D. BELNAP,
Its Attorneys.

WALTER, BURCHMORE & BELNAP,
Of Counsel.

August 15, 1933.

BARNARD & MILLER PRINT, CHICAGO

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In order to find that a disparity in rates on intrastate traffic and on interstate traffic constitutes unjust discrimination, the record must disclose facts showing, and the Commission must find (a) that the intrastate traffic and the interstate traffic must be of a like kind; (b) that the service rendered on intrastate traffic and on interstate traffic is of a like and contemporaneous character, performed under substantially similar circumstances and conditions, (c) and the disparity between the level of interstate rates and intrastate rates must be so substantial as to operate as a real discrimination against and as an obstacle to interstate commerce	42
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BEFORE THE

INTERSTATE COMMERCE COMMISSION

SWITCHING RATES IN THE CHICAGO SWITCHING DISTRICT. } Docket No. 19610.

PETITION OF ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION OF INDIANA, ACME STEEL COMPANY, ET AL., (COMPLAINANTS IN DOCKET 24950), BOARD OF TRADE OF THE CITY OF CHICAGO, INTERVENERS HEREIN, FOR REOPENING FOR FURTHER HEARING, FOR SETTING ASIDE OF ORDER OF JULY 3, 1933, FOR REARGUMENT AND/OR RECONSIDERATION.

Now come Illinois Commerce Commission, Public Service Commission of Indiana, other parties hereto, more particularly described as complainants in Docket 24950, Acme Steel Company, *et al.*, and Board of Trade of the City of Chicago, and present this their petition for reopening of these proceedings for further hearing, for setting aside of the order of July 3, 1933, for reargument, and/or reconsideration of the report and order made herein, and in support of said petition show as follows:

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I.

1. The order is void because there is no evidence in support thereof.

2. The order is void because no proper findings in support thereof have been made by the Commission.

3. The Commission erred in its decision and order of July 3, 1933, in finding:

(a) That the maintenance of lower intrastate rates by the respondents in the Chicago switching district than are contemporaneously effective on interstate commerce in the Chicago switching district results and will for the future result in unjust discrimination against interstate commerce. (Sheet 45.) [195 I. C. C. 118.]

(b) That the record is convincing that the carriers will derive a substantial increase in revenue if the intrastate rates are increased to the interstate basis. (Sheet 45.) [195 I. C. C. 118.]

(c) That no substantial proportion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if the rates found reasonable for interstate traffic are applied to intrastate traffic. (Sheet 44.) [195 I. C. C. 117.]

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II.

The Commission erred in failing to find:

1. The service performed in intrastate switching in the Chicago switching district on Illinois intrastate traffic is substantially less than that performed on interstate traffic.

2. The service performed in intrastate switching in the Chicago switching district on Indiana intrastate traffic is substantially less than that performed on interstate traffic.

3. The disparities between the intrastate switching rates and the interstate switching rates are justified by differences in the transportation services performed by the carriers publishing the rates.

4. The intrastate rates charged for switching service on Illinois intrastate traffic are not less than just and reasonable rates.

5. The intrastate rates charged for switching service on Indiana intrastate traffic are not less than just and reasonable rates.

6. While interstate rates now in effect were found not unreasonable by this Commission on a record closed in 1928, that finding was predicated largely on a cost study ascertained as to certain traffic moving during certain periods in 1927 over certain railroads applied on certain traffic moving in September, 1926; the record

herein fails to show that in view of changed conditions those rates are now not in excess of just and reasonable rates and in excess of what the traffic will bear.

7. The interstate rates prescribed by this Commission for application on switching traffic in Chicago switching district are so high that a large proportion of the switching traffic has been diverted from the rails of the respondents to competing forms of transportation such as plant facilities, trucks, waterways and pipe lines.

8. Many shippers of important commodities moving in large volume have deferred the expenditure of funds necessary to avail themselves of plant facilities and transportation by truck, by water, or by pipe line, pending the determination of the future level of switching rates, both interstate and intrastate; if the future level of switching rates, both intrastate and interstate, is to be upon the present interstate level of rates such shippers will expend the money necessary to utilize plant facilities and truck, water and/or pipe line transportation,

thereby still further increasing the tonnage diverted from rail transportation to competing forms of transportation.

9. Many of the respondents in this proceeding perform no 1-line service in hauling interstate traffic and the maintenance of 1-line intrastate rates lower than those prescribed or found not unreasonable by this Commission for interstate transportation does not unjustly discriminate against interstate commerce of such carriers

inasmuch as there is no 1-line interstate commerce on the rails of such respondents. None of the following respondents apply any 1-line interstate switching rates or perform any 1-line switching service in interstate commerce over their own rails in the Chicago Switching district:

The Atchison, Topeka and Santa Fe Railway Company,
The Baltimore and Ohio Railroad Company,
The Belt Railway Company of Chicago,
The Chesapeake and Ohio Railway Company,
Chicago and Calumet River Railroad Company,
Chicago and Eastern Illinois Railway Company,
Chicago & Illinois Western Railroad,
Chicago and North Western Railway Company,
Chicago and Western Indiana Railroad Company,
Chicago, Aurora and Elgin Railroad Company,
Chicago, Burlington & Quincy Railroad Company,
Chicago Great Western Railroad Company,
Chicago, Indianapolis and Louisville Railway Company,
Chicago Junction Railway,
Chicago, Milwaukee, St. Paul & Pacific Railroad Company,
The Chicago River and Indiana Railroad Company,
The Chicago, Rock Island and Pacific Railway Company,
Chicago Short Line Railway Company,

Chicago, West Pullman & Southern Railroad Company,
Illinois Central Railroad Company,
Illinois Northern Railway,
Manufacturers' Junction Railway Company,

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Minneapolis, St. Paul & Sault Ste. Marie Railway Company,
Pere Marquette Railway Company,
Pullman Railroad Company,
Wabash Railway Company.

The following lines operate 1-line switching haul service, interstate, and apply 1-line interstate rates therefor, in the Chicago switching district:

The Baltimore and Ohio Chicago Terminal Railroad Company,
Chicago and Erie Railroad Company,
Indiana Harbor Belt Railroad Company,
The Michigan Central Railroad Company,
The New York Central Railroad Company,
The New York, Chicago and St. Louis Railroad Company,
The Pennsylvania Railroad Company.

While some of the respondents named in the first paragraph hereof have rails extending across the state line between Illinois and Indiana they do not, with their own power, switch any traffic in 1-line haul between industries in Illinois and industries in Indiana in interstate service, that service being performed by a subsidiary company, owned either wholly or in part, by an affiliated company, or by a lessee company, all of which companies are named in the second paragraph herein and such companies either perform a 1-line interstate haul as set forth in the second paragraph hereof, or as part of a 2-line interstate haul made up of the lines of the carriers in paragraph 1 and paragraph 2 hereof.

10. The record discloses that there is a large number of commodities moving 1-line intrastate in Illinois and 1-line intrastate in Indiana that are not shown to be moving 1-line interstate in the Chicago switching district over the lines of respondents.

11. The record discloses that there are a number of commodites moving over the lines of the respondents, either intrastate in Indiana and/or intrastate in Illinois, which are not shown to be moving interstate in the Chicago switching district.

12. The record does not disclose the revenue which each of the respondents has derived or which could reasonably be expected to be derived on intrastate traffic in Illinois, separately stated as to 1-line, 2-line and 3-or-more-line hauls, either under the present rates or under the rates which were found not unreasonable by this Commission for application on interstate traffic.

13. The record does not disclose the revenue which each of the respondents has derived or which could reasonably be expected to be derived on intrastate traffic in Indiana, separately stated as to 1-line, 2-line and 3-or-more-line hauls, either under the present rates or under the rates which were found not unreasonable by this Commission for application on interstate traffic.

14. The record shows that to increase the intrastate rates of the respondents to the level prescribed for interstate rates in the Chicago switching district will reduce

the volume of business handled and the revenue derived therefrom below the amount now received for the transportation of intrastate traffic on the rates now in effect.

15. The revenues of the respondents on switching

traffic intrastate are ample to maintain an adequate transportation service by each and all of the respondents and cast no undue burden upon the interstate revenues of any or all of the respondents.

16. The cost studies presented by the respondents are based on arbitrary assumptions involving the use of unweighted averages, are of carriers not representative of the entire switching district, are of alleged costs of a few of the carriers for periods of time entirely too limited in scope and not representative of the years' business over a period of time sufficient to reflect the average annual cost of switching service; were made six years ago, were applied against traffic moving seven years ago, and therefore are so remote as to be wholly improper as a basis for finding present costs, and are otherwise so defective as to constitute no proper basis for a finding as to reasonableness or unreasonableness of rates now in effect, in effect prior to December 10, 1931, and proposed to be made effective September 20, 1933, on interstate traffic and on intrastate traffic.

17. The cost studies presented in evidence by the respondents, with all their defects, and giving full effect to all modifications suggested by shippers, state com-

missions and carriers, tend to show that rates now in effect on intrastate traffic for 1-line, 2-line and 3-or-more-line hauls, contribute their fair proportionate share of the revenues of each of the respondents.

18. There is no evidence in the record upon which this Commission can find that the present intrastate rates fail to produce their fair proportionate share of revenues which the commodities transported under such rates should yield to each of the respondents.

19. There is no evidence in the record upon which the Commission can find that intrastate rates now in effect in Indiana and in Illinois constitute an unjust discrimination against interstate commerce.

20. There is no evidence in the record upon which this Commission can find that the respondents will have a greater income if the intrastate rates be increased to the level of the interstate rates.

21. Inasmuch as the record shows that the maintenance of intrastate switching rates within the Chicago switching district for 1-line, 2-line and 3-or-more-line movements, on a lower basis than the corresponding all-comodity rates for 1-line, 2-line and 3-or-more-line movements in interstate switching service, has not caused, nor will cause, any undue preference and advantage to persons or localities in intrastate commerce or any undue prejudice and disadvantage to persons or localities in interstate commerce, it necessarily follows that no unjust

discrimination results or will result against the interstate traffic of such persons or such localities.

22. The term "unjust discrimination" has been a part of the Interstate Commerce Act in Section 2, since 1887; when Congress used the same term in Section 13, paragraph 4, brought into the Act by Transportation Act, 1920, it intended that the phrase should have the same definition and interpretation as had theretofore been made in and under Section 2.

The facts necessary to constitute unjust discrimination against interstate commerce must disclose that the service rendered on intrastate traffic and interstate traffic is of a like and contemporaneous character, performed under substantially similar circumstances and conditions;

the intrastate traffic and interstate traffic must be of a like kind; the law does not require that intrastate rates shall be maintained at the exact level of interstate rates, and the disparity between the level of interstate rates and intrastate rates must be so substantial as to operate as a real discrimination against an obstruction to interstate commerce.

Much of the traffic transported intrastate in Indiana and intrastate in Illinois is not of a like kind to that transported interstate between the two states; since 1-line intrastate traffic in Illinois and in Indiana is performed in the main by carriers which have no 1-line interstate traffic in the Chicago switching district, the circumstances and conditions surrounding the movement in 1-line haul

are not and can not be similar to the circumstances and conditions surrounding the movement of 1-line interstate traffic; the service rendered on intrastate traffic in Indiana and on intrastate traffic in Illinois is substantially less than that performed on interstate traffic between Indiana and Illinois, and therefore it is not a like and contemporaneous service.

For these reasons it follows upon the particular facts of record herein that no unjust discrimination within the meaning of the Act has been shown against interstate commerce by reason of the maintenance of the present relationship in rates intrastate and interstate in the Chicago switching district.

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III.

The Commission should reopen these proceedings, should vacate its order of July 3, 1933, and should set the case for further hearing for the following reasons:

1. Conditions have substantially changed since testimony was submitted in this case and the record closed on May 10, 1932. The competition between the rail respondents and those engaged in transportation by truck, by water and/or by pipe line has greatly increased. Trucking costs are less, and the highways have been still further improved so as to permit an increase in the volume of tonnage diverted from rail to truck, water or pipe line facilities. Shippers who moved all their traffic by rail prior to May 10, 1932, are now moving a substantial portion of their business by plant facilities, by truck, by water, or by pipe line; those shippers who used truck, water or pipe line prior to May 10, 1932, are now giving a greater portion of their traffic to the truck, the water carrier and the pipe line.

2. Petitioners upon further hearing will show to this Commission that the respondents engaged in line-haul traffic of commodities of a like kind to those transported wholly within the Chicago switching district intrastate in Indiana and intrastate in Illinois, receive out of published interstate rates as compensation for hauls of such line-haul traffic to and from industries in the Chicago switching district, amounts much less than are received

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for intrastate switching in Indiana and intrastate switching in Illinois although the line-haul service that is rendered on the interstate traffic to and from Chicago, originating outside of or destined to points outside of the

Chicago switching district greatly exceeds the service performed on intrastate switching. For example, the division of revenue on coal and on many other commodities moving from points outside of Illinois to Chicago is not greater than, and in many cases is less than, the rates applicable on intrastate switching traffic in Illinois and in Indiana. Measured by the compensation received for the service rendered on such interstate traffic, any unjust discrimination which may exist is against intrastate commerce and any needed revenue of the respondents should be made up by increasing line-haul rates on interstate commerce and not by attempting to still further increase intrastate switching charges.

IV.

The order of the Commission of July 3, 1933, should be made definite and precise in the following respects:

1. Some of the respondents take the position that each respondent is required to increase its intrastate 1-line haul rate in Indiana and/or Illinois only to the level of the 1-line interstate rate now published by the particular individual respondent and inasmuch as many of the carriers now publish no interstate 1-line rate, and have no possible 1-line interstate haul, there is no re-

quirement or authority for the increase of the 1-line intrastate rate of such carrier.

In order to make clear what the Commission's order requires in such case the order of the Commission should be set aside and the case reopened with a view to further consideration after oral argument, to the end that the order of the Commission be made precise and definite as to just what rates, if any, should be increased.

2. As a further reason why the case should be reopened and assigned for further hearing and/or oral argument, and/or reconsideration on the record as made, we point to the various errors as above set forth, to the end that the Commission may give full consideration to all of the questions which may be justiciable in any court of competent jurisdiction.

Attached hereto is a brief in support of this petition, which is made a part hereof as fully as though embraced herein.

WHEREFORE petitioners respectfully pray that this Commission will, by appropriate order, reopen these proceedings for further hearing, for oral argument and/or further consideration and that pending such reopening, further hearing, oral argument and further consideration, will vacate its order of July 3, 1933, or postpone the effective date thereof to permit orderly consideration of this petition, and finally as a result of such further hearing and/or reconsideration will find that the present intrastate rates in the Chicago switching district in Indiana and in Illinois violate no provision of the inter-

state commerce act, and will vacate the order instituting these proceedings.

Respectfully submitted,

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CHARLES E. BYRNE,
ANDREW OLSON,
ERNEST J. KRUETGEN,
Commissioners.

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August 15, 1933.

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BRIEF IN SUPPORT OF PETITION.

In the petition herein we have briefly set forth the errors which, as we think, are contained in the Commission's report and order, and the findings which the Commission should have incorporated in its report. We now submit our argument in support of the contentions presented in the petition.

I.

THE LAWFULNESS OF SWITCHING RATES IN THE CHICAGO SWITCHING DISTRICT HAS BEEN UNDER CONSIDERATION BY THIS COMMISSION FOR A NUMBER OF YEARS. THE REPORT AND ORDER OF JULY 3D IS, AS WE THINK, ENTIRELY BEYOND THE POWER AND AUTHORITY OF THIS COMMISSION, WAS MADE ON A MISUNDERSTANDING, AND LACK OF UNDERSTANDING OF THE EVIDENCE OF RECORD.

We shall point out to the Commission not only the evidence of record which negatives the primary finding of the Commission that unjust discrimination against interstate commerce results from the present relationship between intrastate and interstate switching rates, but all the evidence of record bearing upon that question; we are confident that on further consideration of this matter, with its attention directed specifically to all the evidence the Commission will find that there is no unjust

discrimination against interstate commerce and that the effect of the Commisson's order will be to deplete the revenues of the carriers rather than to augment them.

The petition sets forth three fundamental and necessary findings by the Commission which are without any support in the evidence of record.

In the Commission's report is contained an extract from the decision of the Supreme Court in *Florida* v. *United States*, 282 U. S. 194, 75 L. Ed. 291, but as we read the decision in that case, the Commission's report does not conform to the principle of law there laid down. That case requires the Commission to make appropriate findings upon evidence to support any order which the Commission makes in order to remove an undue burden

from a revenue standpoint upon the interstate carrier or to remove unjust discrimination against interstate commerce. While the Commission quotes the language of the Supreme Court in that opinion:

> "The raising of rates does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it, by discouraging patronage."

The Commission, in the present case, wholly disregards the principle of law so stated by the Supreme Court and proceeds to make the finding that increased revenues will result from increasing the intrastate rates in the face of abundant uncontradicted evidence that not only are the interstate rates so high as to be pro-

hibitive of movements of much carload traffic in the Chicago switching district, but in the face of the evidence that to raise the intrastate rates to the interstate level will result in a further loss of important tonnage to competing forms of transportation to such an extent that the carriers will lose, without any possible hope of regaining, the tonnage so diverted from the rails to trucks, water and pipe line.

It is unfortunate that the policy which the respondents outside of Chicago district seem to have adopted and increasingly to put in effect, of making rail rates that will meet the rates of competing forms of transportation, has wholly been disregarded when it comes to making rates in the Chicago switching district. Some of the switching business which has been diverted from the rails can be regained if the present interstate rates be reduced to a reasonable level. Some of the business that will be lost if the interstate rates continue is still moving by rail because of the desire of the shippers to use rail transportation; but if the increased rates author-

ized by the Commission's order become effective on intrastate commerce on all commodities moving in the Chicago switching district, the carriers will lose forever, without any possibility of securing the return to the rails, a large and important tonnage. The rates authorized by the Commission practically destroy profitable operation by the carriers in Chicago switching service. We believe that the Commission, after giving consideration to the

evidence which we now submit in detail, will realize that its order was made under a mistake and misapprehension of the results which have followed the increase in the interstate rates and which indubitably will follow the increase in intrastate rates.

There is no evidence in this record upon which the Commission can find that a substantial increase in revenue will result if intrastate rates are increased to the interstate basis; nor is there any evidence that no substantial proportion of traffic now moving by rail intrastate will be diverted to other forms of transportation if rates found reasonable for interstate traffic are applied to intrastate traffic.

Notwithstanding that the Examiners who heard the testimony of all the witnesses and are thoroughly familiar with the testimony of record, found in their proposed report, Sheet 42,

> "The record does not indicate that an increase in the intrastate rates to the level of the interstate rates would result in increased revenue to the carriers."

this Commission in its decision, Sheet 45 [195 I. C. C. 118], finds that

> "the record nevertheless is convincing that the carriers will derive a substantial increase in revenue if

the intrastate rates are increased to the interstate basis, and we so find."

We are at a complete loss to explain the failure of the Commission to adopt the Examiners' proposed report on this aspect of the case. We now ask the Commission to

consider all the evidence bearing upon this phase of the case and *we challenge the respondents in answering this petition to point to any evidence upon which this Commission could find that increasing the intrastate switching rates in Illinois and Indiana will result in a substantial increase in revenue to the carriers, and any evidence that no substantial proportion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if intrastate rates be increased to the interstate basis.*

We insist that all of the testimony on this phase of the case shows that to increase the intrastate rates will result in a loss of revenue to the carriers and will result in the diversion of a substantial proportion of the traffic now moving by rail intrastate, to trucks, to barges, and/or to pipe lines.

We first direct the Commission's attention to the evidence submitted on behalf of the respondents. The principal witness on behalf of the carriers' petition for a 13th section order, was presented by Mr. Vivian, statistician for the Chicago, Milwaukee, St. Paul & Pacific Railroad. His testimony was an elaboration of certain exhibits intended primarily to show the annual loss to the carriers by reason of the refusal of the state commissions to permit the interstate rates of 3, 3.5 and 4. cents to become effective on 1-line, 2-line and 3-or-more line hauls on intrastate traffic. (Vivian, 2157-59.)

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Mr. Vivian expressly stated that he did not know anything about whether the competition within the district by truck and by barge will take more business from the carriers, if rates be increased to the interstate basis, than under the present intrastate basis. (Vivian, 2426.)

Exhibits presented by him showing the estimated loss in business to the carriers *assumed* that the carriers will have the business on the higher basis of rates. Mr. Vivian admitted that the carriers are losing business to the trucks all over the United States and insisted that there is no more danger to the carriers from truck competition in the Chicago district than there is in any place in the United States. (Vivian, 2441.)

Revenue losses shown on the exhibits presented by him were *predicated on the assumption* that all of the present intrastate traffic would move on the increased rates. (Vivian, 2524-25.)

Mr. Vivian admitted that he had no information as to any change in the flow of interstate traffic from rail lines to truck or water movements since the increased interstate rates became effective on December 10, 1931, and that he had no information as to similar traffic changes intrastate subsequent to the *Ex Parte* 103 increases. (Vivian, 3243.)

Mr. Vivian testified that the carriers are competing with the trucks for the handling of intra-district carload freight and are meeting truck prices in the district, but

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he stated that he knew no more about the subject than is embraced in the testimony we have just referred to. (Vivian, 3243.)

Having in mind the decision of the Supreme Court in

the *Florida case*, that to increase rates does not necessarily increase revenue, there must be an affirmative finding by the Commission upon definite testimony. Certainly Mr. Vivian's testimony does not afford a basis for any such finding.

The following witnesses testified on behalf of the respondent but not one of them gave any testimony as to the estimated revenue which would result from increasing intrastate rates to the interstate basis nor any testimony whatever that an increase in the intrastate rates would result in an increase in revenue:

George J. Shreeve, General Superintendent, Belt Railway of Chicago (Rec., 2199); R. A. Barlow, Trainmaster, The Baltimore & Ohio Chicago Terminal Railroad (Rec., 2333); F. A. Meyer, Operating Department, Indiana Harbor Belt Railway (Rec., 2375); C. L. Whiting, Superintendent of Terminals, Chicago, Milwaukee, St. Paul & Pacific R. R. Co. (Rec., 2403); J. P. Falk, Division Superintendent, Chicago, Burlington & Quincy R. R. (Rec., 2410.) All of the witnesses just named dealt with operating matters and gave no testimony as to revenue under present or proposed rates.

Only two traffic men testified on behalf of the carriers.

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These were W. H. Ward, General Freight Agent of the Indiana Harbor Belt, and H. N. Jouver, General Freight Agent of the Baltimore and Ohio Chicago Terminal.

Mr. Ward testified that he had made no investigation to determine whether increasing rates on crushed stone within the district would have the effect of reducing or increasing revenues of the Indiana Harbor Belt, and had formed no opinion on the matter. (Ward, 2743, 2744.) He did know that more and more stone is being trucked every day. (Ward, 2745.)

Mr. Ward testified that at most of the plants on his line with very large operation the B. & O. C. T. received refuse material which moved under rates which were exceptions to the Lowrey basis. The tonnage was tendered

> "in big units of ten to fifteen or twenty or twenty-five cars at a whack." (Ward, 2740, 2741.)

The situation in regard to the movement of crushed stone is somewhat different than the movement of commodities generally. (Ward, 2743.)

Mr. Jouver made no investigation to determine whether the going into effect of the increased rates on crushed stone would increase revenue either for the Baltimore and Ohio Chicago Terminal or for carriers generally. (Jouver, 2793.) Nor had he made any investigation to determine whether the 10 per cent increase in the intrastate switching rate had any effect on the move-

ment of traffic in the switching district. (Jouver, 2794-2795.)

The foregoing evidence is all of the testimony of the traffic witnesses which has any relation to the effect which would follow from increasing intrastate rates to the interstate basis, and affords no basis whatever for any finding that the revenue of the carriers would be greater as a result of increasing intrastate rates to the interstate basis. We come now to consider the testimony of the shippers.

(The record in the formal complaint case does not follow the paging consecutively of Docket 19610; where we refer to pages of the formal complaint record in Docket 24950 we use the initials "FC" before the page number.)

Standard Oil Company of Indiana. F. S. HOLLANDS, Assistant Traffic Manager, testified on behalf of the Standard Oil Company of Indiana:

At the original hearing the statement was made by Mr. Hollands that if the increased rates as originally published by the carriers were made effective it might force the Standard Oil Company of Indiana to handle considerable of its business by truck. Exhibit No. 1 of the formal complaint case shows the location of the bulk stations of the Standard Oil Company of Indiana and the number of cars shipped by rail to each during the calendar year 1931. This exhibit shows that during 1931,

10,821 cars of petroleum and its products moved from Whiting, Indiana, to the 21 stations shown on the exhibit. To the first 8 stations shown, 3,907 cars moved by rail during 1931. Mr. Hollands testified at the May hearing in 1932 that up to that time all of the shipments to these 8 stations in 1932 had moved and would thereafter move by truck if the rates continued on the interstate basis. The saving between truck costs and rail costs to station No. 1, Englewood, amounted to $10.16 per car. The total saving on all shipments to the 8 stations on 3,907 cars amounted to $36,776.46, or an average of $9.41 per car. To the next 5 stations shown on the exhibit, 14th Street, Blue Island, Clearing, Harvey and Chicago Heights, the company has a contract with a trucking company for services at cost figures less than the cost of handling by railroad but to those particular stations the company had not at that time moved any large volume by truck. (Hollands, FC-20.)

Mr. Hollands had felt that there was a possibility of a compromise with the carriers and if that were accomplished it would avoid continuing the movement by truck.

To extend trucking to these points means an outlay for additional equipment on the part of truck owners and if the Standard Oil Company allowed them to spend the additional money it would be necessary to enter into a contract for truck services for a period of not less than one year. On the basis of shipments to the first 12 stations shown on the exhibit, to which 5,229 cars moved in

1931, the Standard Oil Company is in position by truck under the contract referred to, to handle approximately one-half of the total movement. (Hollands, FC-21.)

During the railroad strike of 1920 the Chicago business of the Standard Oil Company was taken care of by using one of its boats and distributing throughout the city by truck. Just recently communications have been received from a steamship agent soliciting business from the Whiting refinery for deliveries on the lake or Chicago River in a smaller boat than that which is operated on the Great Lakes. (Hollands, FC-21.)

Mr. Hollands was thoroughly familiar with the cost of handling petroleum products on the lakes and if the present rates continue in effect, will certainly make a survey to determine what action will be taken with respect to handling the business to the plants in the Chicago switching district. As Mr. Hollands said, "there is no question in my mind but what we can handle it by water at very much less than the present rail rate." (Hollands, FC-22.)

Due to the persistent solicitation on the part of various trucking companies, who have been insistent that they be furnished package goods out of the Whiting plant, such as oils, greases in barrels and cases, Mr. Hollands was making an extensive survey to determine

what was to be done. At the time of the hearing a very small part of this business was handled by truck because of lack of platform facilities at the Whiting refinery for

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package goods trucking in a large way. At that time some package goods were moving by truck from Whiting to such points as Indianapolis, Terre Haute, Detroit, etc. (Hollands, FC-22.)

Referring to Mr. Saur's testimony on the part of the carriers as to trucking costs at St. Louis, Mr. Hollands pointed out that his company was handling all of its gasoline, kerosene and furnace oil by truck from Wood River, Illinois, to St. Louis stations, a distance of about 30 miles and over a toll bridge. (Hollands, FC-24.)

Mr. Hollands stated that some deliveries will be made by pipe line in the Chicago switching district if the intrastate rate is increased. There is a pipe line from the refinery at Whiting to some of the plants in the Indiana district. (Hollands, FC-25.)

The Standard Oil Company of Indiana has a sufficient volume of business and there is no trouble whatsoever in operating trucks day and night, in fact, from the Standard Oil Company's standpoint it is less trouble to handle by truck than to handle by railroad because the transportation by cars must be watched. (Hollands, FC-32.)

The carriers have published rates to meet competition from Whiting to certain Illinois points outside the switching district where there has been a movement by truck and the carriers made such rates as would put the business back on the railroad. The Standard Oil Com-

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pany in all such cases where the carriers have met truck competition has restored the movement to the railroad. (Hollands, FC-32.)

Inland Steel Company. W. J. HAMMOND, Traffic Manager, testified on behalf of the Inland Steel Company:

While trucking costs may be equal to, or even greater in some instances than the switching costs for carload movement, the saving from purchasing smaller quantities with smaller investment, as compared to the necessity for purchasing larger quantities moving in carloads with an outlay of funds for material that would remain in storage indefinitely, goes far to offset the payment of the higher trucking cost. When a truck is used, little or no cost is incurred for bracing, blocking or wrapping of steel, which represents a substantial cost in making rail shipments. Trucks are loaded in one or two "lifts" and delivery is made a few hours after the truck leaves the plant, whereas the railroads require from two to four days to make this same delivery. When the costs incident to rail shipment are added to the switching rates a more accurate comparison of the costs of handling by truck and by rail results. (Hammond, FC-41.)

Since the previous hearing many new and important highways have been built in and around the Chicago switching district and are being utilized extensively for the handling of commodities that previously moved by rail in switching service. (Hammond, FC-42.)

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Formerly the Inland Steel Company handled none of its finished products by truck but since the interstate rates were increased on December 10, 1931, it has been compelled to use trucking service, which is increasing

rapidly. For the first three months of 1932 the Inland Steel Company handled to the Chicago switching district approximately 5,000,000 pounds of finished products by truck. (Hammond, FC-42.)

Mr. Hammond stated that if the proposed interstate rates are made effective on intrastate traffic the additional burden for switching traffic will further divert a large share of the present tonnage moving via rail to the trucks and will reflect less revenue to the railroads. (Hammond, FC-44.)

Within the three weeks prior to the hearing in May, 1932, the Inland Steel Company had been notified by the largest purchaser of sheet steel in the switching district that it would accept no more carload deliveries of these sheets. This purchaser of sheet steel and others are using trucks because of the low cost and improved service in handling. The commodities trucked are not in any sense limited to sheet steel. The condition as to that commodity had been brought about within the two weeks prior to the hearing in May, 1932. (Hammond, FC-48.)

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Interlake Iron Corporation. G. H. STAAT, Traffic Manager, testified on behalf of this company:

The Interlake Iron Corporation makes shipments from its coke oven plant on the Chicago Short Line R. R. of tar, light oil, sulphate of ammonia and ammoniacal liquor, and there receives shipments of coal. At its blast furnace plant on the Indiana Harbor Belt and Pennsylvania Railroads the inbound shipments are coal, coke, clay, flue dust, ore, limestone and sand, and the outbound shipments are pig iron and slag. (Staat, FC-71.)

At the time of the hearing in May, 1932, limestone was

received by rail locally at a rate of 40 cents per ton. If the single line rate on Illinois intrastate traffic be increased to 60 cents per ton this limestone, Mr. Staat believed, would be received by vessel or by truck. Flue dust is received from the Chicago, West Pullman & Southern on a combination rail rate of $6.50 per car and $8.10 per car, a total of $14.60 per car. An increase to the 2-line rate of 70 cents per net ton would, without question, divert the movement from rail to truck. (Staat, FC-72.) This flue dust could be moved by truck at a cost of not more than 18 cents per net ton. (Staat, FC-80.)

There is a movement of pig iron from the furnaces to the Republic Steel Corporation, adjacent to the plant, at a rate of 40 cents per gross ton, minimum 100,000 pounds. If this rate be increased to 67.2 cents per gross

ton (the equivalent of 3 cents per 100 pounds) the Interlake Iron Corporation will either truck the pig iron the few blocks involved, or extend its plant tracks into the Republic plant and perform the service with its own power causing a revenue loss to the Indiana Harbor Belt Railway or the Pennsylvania of at least $18 per car on every car so handled. Taking the 3-year annual average of 65,427.66 tons of pig iron moved to the Republic Steel Corporation, the loss to the railroads would be, annually, $26,171.06, instead of a gain in revenue of $17,796.32. (Staat, FC-76.)

There is a daily movement of tar to The Barrett Company via Chicago Short Line, Belt Railway and Chicago, Illinois Western, at 2.5 cents per 100 pounds. This is a 3-line haul, which would be subject to the increased rate of 4 cents, an increase of 30 cents per ton. This tar will move by tank barge if the rates be increased. (Staat, FC-76.)

The daily coke requirements for the Interlake Iron Corporation formerly moved via the Chicago Short Line and Pennsylvania Railroads at 50 cents per net ton. That cost was too much of a burden for the furnaces to carry. By the use of trucks this coke requirement is being moved for not more than 18 cents per net ton by three contract trucks. During the period from June 16, 1931, to April, 1932, there has been handled by truck 100,042 tons of coke, a monthly average of 10,530 tons. At 50 cents per ton, the rail loss is $5,265 each month. (Staat, FC-76-79.)

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Grasselli Chemical Company. Testimony on behalf of this company was presented by J. W. Brown:

The Grasselli Chemical Company in 1930 shipped from its plant at Grasselli, Indiana, in the Chicago switching district, intrastate to Indiana destinations in the district, 83,862,080 pounds of sulphuric acid on a rate of 2 cents per hundred pounds, with no allowance for car hire. (Brown, 2616.) The present rate intrastate in Indiana is now 10 per cent higher or 44 cents per ton. The trucking cost from Grasselli to Indiana Harbor, Indiana, is 31.5 cents per net ton (Brown, 2628), and the pipe line cost to East Chicago, Indiana, is 36 cents per net ton. (Brown, 2629.)

If the intrastate rate be increased to 3 cents per hundred pounds or 60 cents per net ton, a pipe line will be in operation within two weeks after the rate is advanced, and what does not move by pipe line will be moved by truck. (Brown, 2630-2631.)

The reason Grasselli Chemical Company has continued to ship by rail notwithstanding the lower possible costs by truck and by pipe line, is that the plant was designed

for rail shipments and sulphuric acid is sold on a per-car basis. If rates be increased the plant will be rearranged so as to permit the use of trucks and pipe lines. (Brown, 2632, 2633.)

The inbound costs of trucking phosphate rock from East Chicago dock in Indiana to Grasselli is less than

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25 cents per net ton, and this contract will be extended to cover trucking of coal, salt, and other commodities. (Brown, 2643, 2647.)

Consumers Company. W. J. Womer, Traffic Manager, testified on behalf of this company:

The only two building construction jobs of any consequence now running in the Chicago district are being supplied with crushed stone wholly by truck, the new Post Office building being erected over the tracks of the carriers, on air rights, using approximately 50,000 tons or 1,000 cars, and the new Field building using approximately 25,000 tons. (Womer, 2979-2980.)

Two or three years ago there was virtually no stone trucked from the quarries as there were no facilities for efficient and economical loading; competition has forced the installation of these facilities and use of trucks from the quarries. (Womer, 2980.)

If intrastate rates be increased the carriers will lose revenue because the movement of stone will change from rail to water or truck, or both. Stone can be trucked cheaper than it can be moved by rail on the present intrastate rate. (Womer, 2981.)

When switching rates, intrastate, were increased 10 per cent some stone shipments were diverted from rail to trucks. (Womer, 2982.)

The present rates, intrastate and interstate, on crushed stone are entirely too high, are more than

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crushed stone as a class of traffic will bear, and will force the use of other forms of transportation. (Womer, 3010.)

Since the hearings in the former case closed in 1928 a number of highways have been paved, some have been widened; new arteries have been opened up; trucks are more numerous, and competition between trucks is keener. (Womer, 3012.)

Outside of the Chicago switching district the carriers have made efforts to establish rates that would keep the crushed stone business on the rails; no such efforts have been made within the switching district. (Womer, 3012.)

Mr. Womer testified that the establishment intrastate of the interstate rate basis of 3 cents, 3.5 cents and 4 cents on crushed stone—

> "is not going to help the railroads get a movement of crushed stone; that is going to help drive it away quicker than any other one thing that I know of." (Womer, 3013.)

Moulding-Brownell Corporation. E. L. MAYNARD, Traffic Manager, testified on behalf of this company:

This company is engaged in the building material business, operating stone quarries, sand and gravel and brick plants, with 23 distributing yards located in all sections of Chicago. (Maynard, FC-247.)

The company owns 80 trucks and also makes contracts for the handling of its business by truck, the maximum

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cost of hired truck service is 44 cents per ton. The maximum haul by trucks is between 16 and 17 miles.

Before making any quotations on any particular job the sales department ascertains the freight rates and then handles with the operating department as to the trucking costs. The job is handled by rail or by truck, whichever is cheapest. (Maynard, FC-251-255.)

There has been some movement by rail in the Chicago switching district to points in Indiana since the increase in freight rates, but most of that stone is now moving by truck. (Maynard, FC-255.)

It is the desire of the Moulding-Brownell Corporation, and other producers for whom Mr. Maynard spoke, that a rate be established which will permit the movement by rail to points in Indiana and to other points in the district, as these producers prefer to handle their material by rail rather than by truck. (Maynard, FC-256.)

Much sand and gravel goes by water, either on the lakes, drainage canal, or Chicago River and affords competition to local material. The Moulding-Brownell Corporation, in connection with this business, operates 5 boats. These and other boats are actively engaged in handling sand, gravel and crushed stone for the company in substantial amount. Water transportation has been so serious that the Elgin, Joliet & Eastern has eliminated the emergency charge on sand, gravel and crushed stone from producing points on its line to Gary and South

Chicago. The movement of stone and gravel to the district from lake ports has been in substantial quantities and has had very serious effect upon the sale and distribution of sand, gravel and crushed stone in the district. (Maynard, FC-316-323.)

Dolese & Shepard Company. O. P. CHAMBERLAIN, President, testified on behalf of this company:

This company is a wholesaler of crushed stone. There has been a tendency, particularly in the past 3 years, to divert the handling of stone in the Chicago district from rail to truck, but the company has not encouraged that movement at all for, in the judgment of Mr. Chamberlain, it is much better business, everything else being equal, to load the stone on cars and move it by rail to its destination within the district, if that be possible. Conditions have been such that the company has been forced to change its facilities by adding truck loading facilities. (Chamberlain, FC-290.)

As illustrating the diversion from rail movement to truck movement: in 1931, the truck deliveries of stone from the company's quarry amounted to 18.3 per cent; during the first four months of 1932, truck deliveries amounted to 31.2 per cent of the total deliveries. (Chamberlain, FC-291.)

In September, 1931, previous to the increase in rates, interstate, considerable stone was shipped to Whiting, Indiana Harbor and East Chicago. When that rate was

increased from 50 cents to 70 cents for the 2-line haul, the business was lost by the Dolese & Shepard Company to a quarry nearer to the Indiana line, and the stone has moved by truck. (Chamberlain, FC-297.)

Dolese & Shepard has not had a carload shipment this year, 1932, to Indiana points within the switching district, although it is the desire of the company to continue to enjoy its market in the Indiana switching district. Mr. Chamberlain considers it much more profitable as a business proposition to load stone on cars and

ship it by rail rather than by trucks, because the operation is simpler; there is less weighing and cheaper handling at the quarry, but the company has been practically driven by conditions to the use of trucks. (Chamberlain, FC-297.)

Acme Steel Company. S. L. FELTON, Traffic Manager, testified on behalf of this company:

He stated that between the Archer Avenue plant and the Riverdale plant of this company there was an important switching service; consideration had been given to the dismantling of the Archer Avenue plant and the transferring of operations to the Riverdale plant. Only because of the Archer Avenue plant being the initial plant of the company and held at the lowest overhead cost, had the transfer of operations not already been made. Any increase in the transportation cost from Archer Avenue to Riverdale hastens the discontinuance

of operation at the Archer Avenue plant and the consequent loss of that tonnage to the carriers. (Felton, FC-199.)

Youngstown Sheet & Tube Company. H. H. BASCOM, Assistant Traffic Manager, testified on behalf of this company:

At the former hearing Mr. Bascom pointed out that there was a movement of coal from the steel plant to the coke plant; and of coke from the coke plant to the steel plant; if the rates on those movements be advanced to the Lowrey basis arrangements would be made for a different method of transportation. Prior to any change in the rates the company put in a method of handling those materials by conveyor at costs even lower than the

rate formerly in effect by rail. While at the time of the hearing in May, 1932, the company had not moved any heavy tonnage by truck between its plants at South Chicago and Indiana Harbor, investigation shows that it is possible to move pig iron from South Chicago to the Indiana Harbor plant at a rate not in excess of 50 cents per ton. (Bascom, FC-210.)

International Paper Company. THOMAS E. REILLY, Traffic Manager, testified on behalf of this company:

Moving paper from Crooks Terminal Warehouse on the Chicago, Burlington & Quincy to a point on the Chicago & Alton would require a 3-line haul. The present switching rate is $15 for a minimum of 60,000 pounds.

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The trucking charge is $12 per car. The proposed rate would be $21 per car, an increase of $9 per car. Paper is being moved from the warehouse and from the mill to customers in the Chicago switching district. Some of it is moving by rail, depending on the relative cost. (Reilly, FC-224-26.)

If the mill, now closed down, resumes manufacture, it will not use the railroads for movements to points in the Chicago switching district, if the increases in rates become effective on intrastate traffic. (Reilly, FC-226.)

Illinois Brick Company. H. G. BROWN, Traffic Manager, testified on behalf of this company:

This company has ten plants in the vicinity of Chicago, six being within the switching district and four immediately outside. Mr. Brown presented typical truck costs and typical truck movements. To the post office job, on rail shipments, the costs were 87.5 cents per thousand brick for loading, 27.5 cents unloading

charge at destination team track, $1 trucking charge from team track to building construction, rail rate equivalent $1.10 per thousand brick, making a total of $3.25 per thousand brick, or $1.625 per net ton. The truck movement from plant to the same building construction, less than 16 miles, cost $1.95 per thousand brick, or 97.5 cents per ton—65 cents per ton less than when transported by rail. (Brown, FC-234-236.)

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The Barrett Company. J. L. ROBERTS, Traffic Manager, testified on behalf of this company:

The Barrett Company has a plant at the south fork of the Chicago River at which it produces paving tar principally, roofing tar and creosote oil, from crude coke tar received from the Interlake Iron Corporation and the Wisconsin Steel Company. For a number of years this crude tar was handled into the plant by tank barges owned by the Barrett Company, but at the insistence of the rail companies, the movement was changed from barge to tank cars. (Roberts, 3022.)

The annual movement intrastate switching of crude tar is 80,000 tons, on a rate of 2.5c without allowance for car hire.

The Barrett Company has barge equipment and the installation of pipe line connection to and from the barge is a minor matter. If the present rates be increased from 2.5c to 3.5c for rail movement, all of the crude coke tar will be diverted from rail to barge. (Roberts, FC-826, 3023.)

The present annual revenue on 80,000 tons at 2.5c is $40,000. On 3.5c rates the revenue would be $56,000.

In an effort to get $56,000 the carriers will lose their present $40,000.

In addition to the foregoing testimony presented by shippers' representatives Mr. O. R. Livinghouse, for five years head of the Traffic Department of the Public Ser-

vice Commission of Indiana, expressed the opinion, which undoubtedly was based on his experience, that if costs today are higher the carriers should be entitled to higher rates, and "the transportation would probably seek other forms of transportation than to use rails."

There is no other testimony of record in the case bearing upon this question so far as we have been able to ascertain. The record is clear, unequivocal, all one-way, and affords no possible basis for any findings other than: (a) on present intrastate rates in Illinois and Indiana a large volume of traffic is moving via truck, by water or by pipe line; (b) shippers, even though they could move their shipments by these forms of competitive transportation and save money as compared with rail costs have, because of their desire to give the railroads the business, paid higher transportation costs than were available by truck, by water or by pipe line; (c) if the disparity between costs of shipment by truck, by water, and by pipe line, as compared with rail rates, be still further increased, the carriers will lose a great volume of business. No testimony by any witness is contained in this record from which the Commission can find that a substantial increase in revenue will result if intrastate rates are increased to the interstate basis, nor any evidence from which the Commission can find that no substantial proportion of traffic now moving will be diverted to

other forms of transportation if the intrastate rates be advanced to the interstate basis.

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In order to find that a disparity in rates on intrastate traffic and on interstate traffic constitutes unjust discrimination, the record must disclose facts showing, and the Commission must find, (a) that the intrastate traffic and the interstate traffic must be of a like kind; (b) that the service rendered on intrastate traffic and on interstate traffic is of a like and contemporaneous character, performed under substantially similar circumstances and conditions; (c) and the disparity between the level of interstate rates and intrastate rates must be so substantial as to operate as a real discrimination against and as an obstacle to interstate commerce.

The phrase "unjust discrimination" has been a part of the Interstate Commerce Act since 1887, being used in Section 2. In the absence of any clear showing to the contrary, it must be assumed that when the same phrase is used in Section 13, Paragraph 4, which was made a part of the Interstate Commerce Act by the Transportation Act of 1920, it was intended to have the same definition and interpretation as had theretofore been made of the phrase in Section 2.

In many cases, both by the Commission and by the courts, the term "unjust discrimination" used in Section 2, and the term "preference and prejudice" used in Section 3, have been used interchangeably. The underlying thought in unjust discrimination is different treatment, when, under the circumstances and conditions existing, there should be no difference in treatment.

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The language of the Statute in Section 2 sets forth as necessary factors in unjust discrimination: (a) a like and contemporaneous service in the transportation (b) of a like kind of traffic, (c) under substantially similar circumstances and conditions; unless all three of these factors existed in a particular case there was no "unjust discrimination" shown.

The service performed on interstate traffic and intrastate traffic is not of a like and contemporaneous character, performed under substantially similar circumstances and conditions.

The service performed on Indiana intrastate traffic and Illinois intrastate traffic is not the same as that performed on interstate traffic. The report of the Commission itself shows that the average 1-line haul of intrastate traffic in Indiana is only 6.3 miles as compared with 14.7 miles, the average haul on intrastate traffic in Illinois and 15.0 miles, the average haul on interstate traffic between Indiana and Illinois.

The average hauls shown of record and used by the Commission in Sheet 40 of its report relate entirely to cost study cars shown on Exhibit Number 97. The average haul for Indiana intrastate 1-line, was 6.3 miles, computed on 2,426 cars where the total operating expenses were only $40,289. The average for the Illinois intrastate 1-line was computed on only 1,951 cars and is shown as 14.7 miles. The average interstate haul, 1-line, was 15 miles; computed on 7,573 cars.

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The record shows that the Chicago Junction in September, 1926, handled intrastate in Illinois 1,764 cars

other than iron and steel, and 14 cars of iron and steel, a total of 1,778 cars in 1-line hauls. None of these 1-line cars were embraced within the cost study. (Tholin, 2869.) Assuming that one-fourth of these cars had been representative of a week's service and had been embraced in the cost study, we would have had 444 cost study cars additional. The average haul of the Chicago Junction in September, 1926, was 1.6 miles. Applying this average to the 444 cars which should have been in the cost study, and consolidating with the 1-line cost study cars makes the average 1-line haul, Illinois intrastate, 12.3 miles. So, had the 444 cars of the Chicago Junction been included in the cost study we would have had a total of 2,395 cars and the average haul per car would have been reduced from 14.7 to 12.3 miles, which is approximately 80 per cent of the average haul on interstate cars.

Indiana intrastate cars receive a 1-line service of substantially less than one-half that performed on the interstate 1-line cars. When we consider the relative cost of handling 1-line cars, as shown in Exhibit No. 97, we find that the operating expenses per hundred pounds on Indiana intrastate is 1.7c as compared with 1.85c on interstate traffic.

When we come to consider 2-line hauls we find there that the cost study has shown, Exhibit No. 95, an average haul on 5,853 Illinois intrastate study cars, of

15.9 miles as against an average on 5,472 interstate cars of 27.5 miles; the costs per hundred pounds on the Illinois intrastate were 2.03c as against 2.49c interstate. On Indiana 2-line intrastate cars the average haul was only 7.3 miles as against the average interstate haul of 27.5 miles.

On 3-line cars the average haul, Illinois intrastate, on 1,930 cars was 23.4 miles as against 34.2 miles on interstate. So we have in the foregoing facts relative to averages a clear showing supporting the dissent by Chairman Farrell and Commissioner Aitchison, on the ground that the disparities in rates were justified by the differences in service. All these facts relate to the cost-study cars, as shown in Exhibit No. 97.

Similar facts are contained in Vivian's Exhibit No. 99, which shows an average car haul on Illinois intrastate traffic in September, 1926, of 7.46 miles 1-line, of 15.77 miles 2-line, and 22.7 miles 3-line, being the averages on all Illinois intrastate traffic in September, 1926.

One of the most important facts to be considered in comparing these figures has not been emphasized, heretofore: notwithstanding Illinois intrastate traffic constituted 45.5 per cent of the total 1-line movement in September, 1926, only 16.3 per cent of the total 1-line study cars was Illinois intrastate. The average haul on all Illinois intrastate 1-line traffic (8,968 cars) moving in September, 1926, was 7.46 miles as appears in Vivian's Exhibit No. 99. We insist this latter figure is more

representative of the service performed on Illinois intrastate 1-line traffic than is 14.7 miles the average computed on 1,951 study cars only which were only 16.3 per cent of the total Illinois intrastate traffic.

The Indiana 1-line intrastate average haul of 6.3 miles was computed on study cars which were 94.8 per cent of the total Indiana 1-line intrastate moving in September, 1926.

The 1-line interstate average haul of 15 miles was

computed on study cars which were 92.7 per cent of the total 1-line interstate moving in September, 1926.

If the study cars embraced in the 1-line Illinois intrastate had constituted the same prgeentage of the total 1-line Illinois intrastate as did the 1-line Indiana intrastate and the 1-line interstate, the average haul for 1-line Illinois intrastate would have approximated the 7.46 miles shown for all such traffic in Vivian's Exhibit No. 99.

When we come to consider the 2-line Illinois intrastate traffic we do not find such a disparity in average hauls on the study cars and the total cars handled in September, 1926, as in the averages on the 1-line traffic Illinois intrastate. Illinois intrastate 2-line study cars were 50.9 per cent of the total study cars and the total Illinois intrastate 2-line cars in September were 57.0 of the total 2-line cars in that month;

the average haul on suclr study cars was 15.9 miles and on the total moving in September was 15.7 miles clearly indicating the volume of study cars was sufficient to reflect the average of the total handled in Illinois intrastate 2-line.

So we correct the showing as to average hauls on Illinois intrastate 1-line for study cars on sheet 40 of the Commission's report by substituting the average for all of Illinois 1-line intrastate traffic in September, 1926, shown in Vivian's Exhibit No. 99, and add columns showing the percentages that the Illinois intrastate, Indiana intrastate and total intrastate are of the interstate averages, using data shown in Exhibit 97:

Average Hauls	Illinois	Percentage of Interstate	Indiana	Percentage of Interstate	Average Intrastate	Percentage of Interstate	Interstate
1-line....	7.46	49.7	6.3	42.	7.2	48.0	15.0
2-line....	15.9	57.8	7.3	26.5	15.6	56.7	27.5
3-line....	23.4	68.4	...	...	23.4	68.4	34.2

In view of this showing it is not possible to find that the disparities in rates intrastate and interstate are not warranted by disparities in service for which the respective rates are charged.

So far we have dealt with averages of all commodities; now let us note some of the facts as to particular commodities and these are of more important consideration since we are dealing with rates for individual services on commodities.

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The average haul intrastate on 83,862,080 pounds of sulphuric acid 1-line intrastate Indiana of Grasselli Chemical Company was 4 miles, covering hauls ranging from 200 feet to 8 miles; the shortest interstate haul of the same company was 25 miles.

The 1-line Illinois intrastate average in 4926 on crushed stone in the switching district was 13.64 miles on 11,676 cars and the interstate average was 27.18 miles on 2,594 cars.

The Commission, in the light of this undeniable record, should adopt the dissenting opinion as the opinion of the Commission, holding the disparities in rates were justified by differences in services.

The intrastate traffic is not of a like kind to that of the interstate traffic.

The record does not show that the intrastate traffic in Indiana and the intrastate traffic in Illinois is of a

like kind to that transported in interstate traffic within the Chicago switching district. Exhibit No. 120 shows the interstate movement of both study and non-study cars for the month of September, 1926, by commodities, interstate, and Illinois and Indiana intrastate taken from Carriers' Exhibit 11A. It will there be noted that in 1-line movement there were 84 cars of wheat, Illinois intrastate, but no cars of wheat moved interstate during the same month.

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Similarly there were Illinois intrastate 1-line movements of hay, straw, and alfalfa, "other fresh vegetables," other products of agriculture, fresh meats, packing house products, eggs, butter and cheese, wool, hides and leather, anthracite coal, salt, "other products of mines," logs, posts, and poles, "other products of forests," vegetables oils, automobiles and trucks, fertilizer, paper and books, canned goods, none of which commodities moved in 1-line interstate movements during the month of September, 1926. The same exhibit shows that there was a 1-line movement, interstate, of the following commodities and no 1-line movement intrastate in Illinois: sugar, syrup, household goods and beverages. Of the commodities moving 1-line in largest volume there were 1,304 cars of packing-house products in Illinois intrastate and none in interstate traffic; 2,068 cars of clay, gravel, sand and stone moved Illinois intrastate 1-line; and only 631 cars moved interstate 1-line. Of the "miscellaneous" commodities, group number 69, only 874 moved 1-line interstate while 3,040 moved Illinois intrastate 1-line.

A similar analysis of the 1-line situation in Indiana discloses a like result. Many groups of commodities moved interstate that did not move Indiana intrastate

during September, 1926. Only twenty groups of commodities moved Indiana intrastate 1-line in September, 1926, while during the same period, interstate, there moved 47 groups.

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This analysis of the movement in September, 1926, which has been urged by the carriers as representative of the traffic flow in the switching district, clearly demonstrates that the character or kind of commodity moving intrastate in Indiana and intrastate in Illinois is not identical or of a like kind with that moving interstate.

In order to show unjust discrimination against interstate commerce the Commission must deal not with "all freight" as the traffic transported, but must deal with the commodities actually moving and must find on the evidence of record that the intrastate traffic 1-line in Illinois is of like kind with the 1-line interstate traffic. Similarly, the Commission must find that the 1-line intrastate Indiana traffic is of like kind with the 1-line interstate traffic. The evidence of record constitutes no basis for such a finding by this Commission.

The intrastate traffic is not transported under substantially similar circumstances and conditions to those surrounding the interstate transportation.

The third element or fact which the record must show clearly is that the traffic is transported under substantially similar circumstances and conditions in intrastate service and in interstate service. In the first place, it must be noted that the carriers which perform the 1-line interstate traffic are not the same carriers that transport the 1-line intrastate traffic. There are 26 carriers that do not perform any 1-line switching service in in-

terstate commerce over their own rails in the Chicago switching district and only 7 carriers that perform 1-line interstate switching service in the Chicago switching district. There is therefore a manifest difference in the circumstances and conditions surrounding the intrastate service and the interstate service in 1-line movement.

While the Commission finds in its report, Sheet 45, that transportation conditions throughout the Chicago switching district are substantially similar, that by no means is a finding that circumstances and conditions surrounding the service performed 1-line, intrastate, in Illinois is substantially similar to that surrounding the interstate, 1-line movement. For example, the cost study shows only 6.3 miles of railway on the average are used in performing 1-line switching in Indiana. Exhibit No. 99 shows the average haul of all traffic in September, 1926, moving 1-line Illinois intrastate was 7.46 miles, while 15 miles are used in performing the 1-line interstate.

Similarly, only 7.3 miles of railway are used in switching the average 2-line cost-study car in Indiana, and only 15.9 miles of railway in switching the average cost-study car intrastate 2-line in Illinois, while 27.5 miles are used in performing the interstate 2-line service.

For the 3-line movement in Illinois (there was no 3-line movement Indiana intrastate), the average requires 23.4 miles of railway while the interstate 3-line car requires on the average 34.2 miles. Moreover the

alleged cost figures shown by the carriers show different amounts, varying between the hauls intrastate and inter state. Therefore the record will not support a finding that circumstances and conditions are substantially

similar in the movement 1-line intrastate in Illinois and in Indiana to those surrounding the 1-line movement on interstate traffic.

The record likewise contains no basis for finding a similarity of conditions on 2-line and 3-line hauls intrastate with those on 2-line and 3-line hauls in interstate movements.

II.

THE COMMISSION'S REPORT OMITS IMPORTANT AND ESSENTIAL FINDINGS OF FACT.

In the petition of which this brief is a part we set forth in detail 22 findings of fact which the Commission should incorporate in its report, if that report is to properly reflect the pertinent facts of record.

Taking these up in the order in which they are set forth in the petition:

1. The service performed in switching on Illinois intrastate cost-study traffic, 1-line, is shown by the Commission's own report to be 14.7 miles as compared with 15 miles interstate 1-line haul. Elsewhere in this brief we have shown that the 14.7 miles intrastate was derived from a consideration of only 1,951 study cars shown on Exhibit No. 97. If the Chicago Junction, with its aver-

age haul of only 1.6 miles for 1-line Illinois intrastate had been included for the one week's study there would have been 444 cars, or a total of 2,395 cars and the average haul would have been 12.3 miles instead of 14.7 miles. If approximately the same percentage of cars moving had been embraced in the cost study 1-line Illinois intrastate as were embraced in the 1-line Indiana intrastate and 1-line interstate the average haul 1-line intrastate Illinois would have been approximately 7.46 miles. On 2-line

hauls the Illinois intrastate traffic is shown by the Commission's own report, Sheet 40, to be a little more than half the interstate haul, being 15.9 miles Illinois intrastate 2-line and 27.5 miles interstate 2-line; on 3-line hauls the average Illinois intrastate is 23.4 miles and 3-line interstate 34.2 miles.

The service performed in intrastate switching in Illinois is substantially less than that performed on interstate traffic.

2. The switching service performed 1-line intrastate in Indiana on cost study cars is 6.3 miles, while the interstate 1-line haul is 15.0 miles. The average service on 2-line Indiana intrastate was 7.3 miles and on 2-line interstate was 15 miles. There was no 3-line movement Indiana intrastate of the cost study cars but the average interstate haul, 3-line, was 34.2 miles. The service performed in intrastate switching in Indiana is substantially less than that performed on interstate traffic.

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3. The disparity between the intrastate switching rate for 1-line hauls in Indiana and Illinois and the 1-line interstate rate is ½c per 100 pounds. The service performed on Indiana 1-line intrastate is less than half the 1-line interstate service although the rate on the former is 92 per cent of the rate on the latter. The service performed 1-line in Illinois, if we give effect to the 1-line movement of the Chicago Junction, is 82 per cent of the haul performed on interstate 1-line, and if we take the average haul in September, 1926, on 1-line Illinois intrastate traffic of 7.46 miles is 49.7 per cent of the average interstate haul 1-line, while the rate 1-line Illinois intrastate is 92 per cent of the interstate rate.

The disparity in rate for 2-line hauls is ¾ cents per 100 pounds. The service performed on Indiana intrastate

2-line traffic is approximately 25 per cent of the service on 2-line interstate, but the rate on the former is 81.5 per cent of the rate on the latter. On 2-line hauls Illinois intrastate the haul is 57.8 per cent of the 2-line interstate haul, while the rate, Illinois intrastate, 2-line, is 81.5 per cent of the 2-line interstate rate.

The difference in rate for 3-line hauls is 7/10 cents per 100 pounds. The record discloses no 3-line haul Indiana intrastate. The average haul for 3-line Illinois intrastate is 68.4 per cent of the 3-line interstate haul and the rate, 3-line Illinois intrastate, is 82.5 per cent of the interstate 3-line rate. So that we find the dissenting opinions of Chairman Farrell and Commissioner Aitchison are

abundantly supported by the facts which show that the differences in rates are justified by the differences in services performed for the respective rates.

4. The Commission has not anywhere found that the intrastate rates charged for switching service on Illinois intrastate traffic are less than just and reasonable rates. If the rates charged for the intrastate service are not unreasonably low they cannot cast a burden on interstate commerce or in any way unjustly discriminate against that commerce. The Rules of Practice of the Commission, particularly III (n), require that complaints bringing in issue any state rate alleged to cause unjust discrimination against interstate commerce contain appropriate allegations to present for decision "the issue of the justness and reasonableness under Section 1 of the rates, fares, charges, classifications, regulations, or practices complained of in so far as applicable to interstate commerce and the issue as to what should be the rate therefor to be charged in order to remove such discrimination."

Clearly one of the issues in the instant inquiry is whether the intrastate rates complained of are just and reasonable for the service performed. There is no finding by the Commission on this matter and there should be a finding made with reference to the facts of record bearing on this question. We do not here again present the facts and argument, which have already been presented to the Commission, showing that the rates in

effect on intrastate traffic in Illinois are not less than just and reasonable, but we still insist the record clearly shows that rates of 2.5 cents, 2.5 cents and 3 cents for 1-line, 2-line and 3-line-or-more hauls are not less than reasonable rates.

5. What has been said in the preceding paragraph with relation to the rates on Illinois intrastate traffic apply with greater force to rates on Indiana intrastate traffic as the rates are the same and the average service performed in Indiana much less than the service performed on Illinois intrastate traffic.

6. This requested finding was argued fully in brief and oral argument and we shall not add to what was there stated. We simply ask the Commission to again consider the facts of record on this matter and correct its findings.

7. Elsewhere we have set forth the facts of record showing that a large proportion of the switching traffic moving interstate has been diverted to the trucks, waterways and pipe line. On this subject the Commission does find, Sheet 45, that existing competition by motor truck is material and that in all probability additional tonnage will be diverted to the trucks. There is a failure on the part of the Commission's report to clearly

point out the vast amount of tonnage which the record discloses has been lost to the carriers by reason of the interstate rates now in effect. Elsewhere we discuss this matter in greater detail.

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8. We call attention, in support of this requested finding of fact, to the testimony on behalf of the Grasselli Chemical Company, Inland Steel Company, Standard Oil Company, Interlake Iron Corporation, The Barrett Company and other shippers of large volume of traffic in the Chicago switching district, referred to in greater detail at page 24 *et seq.* hereof. There can be no question but that important tonnage has continued to move by rail in the Chicago switching district because of the hope on the part of such shippers that rates would not be increased as a result of the final decision in this case and that, pending such decision, the shippers have paid more than it would have cost to move their commodities by truck, by water or by pipe line. When the permanent adjustment has been determined it is certain that the carriers will find that docks and shipping platforms of industries in the Chicago district will be redesigned and reconstructed to permit the economical handling by truck, by water, by plant facilities and/or by pipe line and that as a result thereof there will be an increase in the tonnage diverted from rail transportation to these competing forms of transportation that will far more than offset the increase in rate on such traffic as is retained on the rails.

9. We regard the statement of fact in this paragraph as very important because it shows the extent to which there is no comparable service 1-line by many of the respondents with 1-line haul interstate in the district.

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The Santa Fe, for example, does not reach Indiana, it cannot perform any 1-line interstate switching service within the Chicago switching district and applies no contemporaneous 1-line interstate rate. There is, therefore, no possible discrimination, so far as this carrier is concerned, in its 1-line haul rates intrastate Illinois against 1-line interstate commerce, of which it has none.

The Baltimore and Ohio is listed in this paragraph of the petition as one of the carriers performing no 1-line switching service in interstate commerce; any movement between industries on the B. & O. in Illinois and industries on the B. & O. in Indiana is in part performed by the B. & O. Chicago Terminal and becomes a 2-line haul. We ask the most careful consideration by the Commission of the point we are here raising, that is, that there is no possible discrimination against 1-line interstate commerce of the carriers named by reason of the publication of rates on intrastate traffic for 1-line haul in the case of all of those railroads that perform no interstate service. How can the Chicago Junction Railway, for example, unjustly discriminate against interstate commerce by maintaining the 1-line intrastate rate of 2.5 cents for an average haul of 1.6 miles, when it applies no 1-line interstate rate and performs no service whatever in 1-line haul of interstate traffic on its rails? The average haul, 1-line interstate traffic of the cost study cars was 15 miles. The Commission cannot possibly find that the maintenance of a rate of 2.5 cents for an aver-

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age haul by the Chicago Junction of 1.6 miles unjustly discriminates against 1-line haul interstate commerce when the Chicago Junction performs no 1-line haul on

interstate commerce and when the average for other carriers for 1-line interstate haul is 15 miles.

It may be that the Commission did not intend that there should be any change in the intrastate 1-line rate of carriers in Illinois and in Indiana when such carriers perform no 1-line switching service interstate. That is indicated by the statement in the sentence at the bottom of Sheet 43 and the top of Sheet 44 where, in giving the reasons why the Commission is

> "not convinced that any substantial proportion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if the rates found reasonable for interstate traffic are applied thereto."

the Commission points out, "a very large proportion of the intrastate traffic is handled in 1-line movements." This language may very properly be assumed to refer to the fact that a large proportion of the intrastate traffic is exempt from the Commission's order because it is handled in 1-line movement by the carriers set forth in this paragraph of the petition as performing no 1-line switching service in interstate commerce, their 1-line haul being wholly an intrastate movement not required or even subject to a requirement of an increase in rate to the 1-line interstate basis of other carriers.

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The Commission's report should clearly show that the order does not require any change in the 1-line intrastate rate of carriers not performing 1-line interstate service.

10. Heretofore on page 48 *et seq.*, we have set forth the extent to which the record discloses that there is a large number of commodities moving 1-line intrastate in Illinois and 1-line intrastate in Indiana that are not

shown to be moving 1-line interstate. The Commission cannot indict the rates on any commodity moving intrastate when there is no movement of such commodity interstate on a comparable haul by finding unjust discrimination against interstate commerce in general.

The carriers, either with or without the support of a large portion of the shippers, cannot publish an all-commodity basis of freight rates in such form as to preclude the consideration of the rate upon the commodity transported in the unit of freight car service, which is the carload. Each commodity is entitled to be considered by itself and not to be subjected to a basis of rates which might be reasonable or unobjectionable on other commodities.

We therefore insist that the rates under consideration in this case must be weighed by the circumstances and conditions surrounding the application thereof to the movement of the particular commodity. Since there are many commodities moving intrastate in Illinois and intrastate in Indiana that do not move interstate between

Illinois and Indiana points in the switching district, the Commission cannot make a finding of unjust discrimination in rates on such commodities. The record discloses a large number of such commodities; therefore the Commission's order must be modified to give appropriate effect to the facts of record in this respect.

11. The record discloses, as we have elsewhere pointed out, that there are a number of commodities moving interstate in the Chicago switching district over the lines of the respondents which do not move either intrastate in Indiana or intrastate in Illinois. In such cases, there being no movement of such commodities intrastate, there

is no discrimination against the interstate commerce. The like character of commodities intrastate and interstate which is necessary to constitute unjust discrimination is lacking. The Commission should give appropriate effect to the facts of record by proper findings in this respect.

12. There is no testimony with relation to revenue on switching traffic by individual carriers other than that shown for September, 1926, and for certain lines and certain traffic for November, 1931, and January, 1932. There is no complete showing for any or all of the carriers as to revenue that has been derived on intrastate traffic in Illinois, separately stated for each of the 1-line, 2-line, or 3-or-more-line hauls. Similarly, evidence is lacking as to the revenue under rates which were found not unreasonable for application on interstate traffic. Without

such a finding as to revenue, the Commission cannot make a finding that revenues of the carriers in Illinois will be increased by advancing the intrastate rate to the interstate basis.

13. What was said in paragraph 12 as to Illinois interstate traffic should be considered, in this paragraph, as applicable to Indiana intrastate traffic.

14. Elsewhere (see pages 19 to 41) we have analyzed the evidence of record showing that to increase the intrastate rates to the level prescribed for interstate rates will reduce the volume of business and the revenue derived therefrom below the amount now received for the transportation for intrastate traffic on the rates now in effect. The present rates, interstate and intrastate, are higher than the traffic will bear and have driven busi-

ness from the rails to competing forms of transportation.

15. The record shows that those carriers in the district which are engaged exclusively in switching service are in a relatively satisfactory condition. Exhibit number 120, page 24, shows the relation of net railway operating income to investment value of property owned and used by the Baltimore and Ohio Chicago Terminal Railroad Company, Belt Railway, Indiana Harbor Belt, Chicago River and Indiana-Chicago Junction, Chicago and Illinois Western, Chicago Short Line, Chicago, West Pullman and Southern, Illinois Northern, and Pullman Railroad Companies, being nine of the respondents en-

gaged solely in switching operations. For the average of seven years ended December 7, 1931, the rate of return for the nine railroads treated as a single system was 6.26 and for 1931 alone was 4.48, based on the investment value of the property owned and used. Using the I. C. C. valuation as of December 31, 1926, and giving effect to changes therein, the average rate of the annual return for the seven years ending December 31, 1931, was 7.89, and the rate of return for 1931 was 5.66. The I. C. C. valuation to date as of December 31, 1931, was 79.32 per cent of the investment in road and equipment as of December 31, 1931.

Here we have the roads engaged exclusively in switching service showing a most prosperous condition. It therefore is not possible on the record to find that the rates of the respondents on intrastate traffic unjustly discriminate against the interstate commerce of such carriers.

16. In brief and at oral argument heretofore, we have

set forth our objections to the cost study presented by the respondents and the reasons why that cost study affords no basis for finding as to the reasonableness of any rates of the respondents. We shall not here reargue the question involved.

17. In the former decision herein by this Commission, 177 I. C. C., page 687, the Commission found that if full effect were given to the modification in the cost study submitted by both carriers and shippers, the net change

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in the originally submitted costs would be decreases of 2.2 mills per hundred pounds for the average 1-line haul of 13.19 miles, 2.2 mills for the average 2-line haul of 21.32 miles, and an increase of 0.3 mill per hundred pounds for the average 3-line haul of 26.53 miles.

On 1-line traffic, switching cost is 1.63 cents as shown on page 43 of our brief of July 29, 1932; a rate of 2.5c for a 1-line haul gives an operating ratio of 65.2 on such costs. A 2.5c rate for a 2-line haul with costs of 2.03c produces an operating ratio of 81.2. The 3-line rate of 3c with an operating cost of 2.55c produces an operating ratio of 85. These are the operating ratios without considering the 10 per cent increase in the infrastate rates; the operating ratio of the rates as increased 10 per cent to costs named is 59.3, 73.8 and 77.3 for the respective hauls. Without question the 1-line rate contributes much more than its fair proportionate share of the revenues of each of the respondents. The same is true of the 2-line and 3-line rates when full consideration is given to the high operating ratio at the present time of all carriers throughout the country.

18. The record is bare of evidence to support a finding that present intrastate rates fail to produce their

fair proportionate share of revenue which the commodities transported under such rates should yield to *each* of the respondents. We have already pointed out that the respondents upon whom the burden to prove that present intrastate rates do not yield their fair share of the rev-

enue, have rested their case primarily on the cost study about which we have registered so much complaint. Accepting that cost study with the modifications which the Commission made to give effect to suggestions of both shippers and carriers, as stated in paragraph 17 hereof, shows an operating ratio quite favorable when compared with the operating ratios of carriers throughout the country.

19. The proposed report of Examiners Faul and Wilbur correctly summarized the facts of record in recommending that the Commission find that the maintenance of intrastate rates on a lower basis than the interstate rates

> "has not been shown to result in unjust discrimination against interstate commerce."

Both examiners heard all the evidence presented in the various hearings in these cases. They had opportunity to see the witnesses and they thoroughly understand all of the facts in connection with the case. Their judgment on the matter is entitled to greater weight than the Commission's report accords. They point out that the record does not contain convincing nor adequate proof that an increase in the intrastate rates to the interstate basis would result in an increase in total revenue as there are present other factors such as competitive movement by barges, pipe lines and trucks which would tend to decrease the volume of traffic sufficiently to offset any ad-

ditional revenue which otherwise might be gained by an increase in the rates.

The Commission does not in its report point out any facts of record which support its conclusion, so contrary to that reached in the report of the Examiners. In a matter so important as the present, where the authority and power of the state authorities are stricken down by a mere conclusion in the garb of a finding, it would seem desirable, at least, that the Commission should set forth in considerable detail the facts of record which lead it to the conclusion that the intrastate rates unjustly discriminate against interstate commerce.

20. Elsewhere we have pointed out the evidence in the record which without conflict shows that the respondents will have a smaller income if the intrastate rates be increased to the level of the interstate rates, due primarily to the fact that the tonnage now moving by rail on the intrastate rates will be diverted to trucks, water, or pipe line, and we shall not here restate those facts.

The Barrett Company, Inland Steel Company, the Standard Oil Company, the Interlake Iron Corporation, the Youngstown Sheet and Tube Company, the Grasselli Chemical Company and other representative shippers, through their representatives, testified that conveyors, pipe lines, hired trucks and company-owned trucks, as well as barge equipment, would be furnished to move their products where now the movement is by rail. To

all these means of transportation, traffic now moving by rail will be diverted with consequent loss, not increase, in revenue of the rail carriers.

21. The Commission in its report follows the recommendation of the Examiners in the finding that no undue preference or advantage to persons or localities in interstate commerce, or any undue preference or advantage to persons or localities in intrastate commerce will result from the maintenance of lower rates on intrastate commerce than on interstate commerce. The record abundantly supports that finding, but we are at a loss to reconcile a finding that while no undue prejudice and disadvantage results to persons or localities engaged in interstate commerce from the difference in rates, with the finding that the commerce itself in which the persons and localities are engaged, is subjected to undue discrimination by the same adjustment or relations in rates on intrastate and interstate commerce, that is expressly found to be free from offense against the persons engaged in interstate commerce and the localities where such persons are engaged in interstate commerce.

22. Elsewhere in this brief (see pages 42, 48 *et seq.*), we have shown that the facts necessary to show unjust discrimination against interstate commerce are not shown to be present in this record; the rates on Illinois intrastate and Indiana intrastate traffic are for a different service from that in interstate traffic, apply on commodities not transported under similar circumstances and con-

ditions in interstate commerce, and the rates are applied on intrastate traffic in many cases where there is no comparable interstate rate applied by the respondent publishing the intrastate rate. No violation of law exists in such cases and the Commission is without power to make the order complained of herein.

III.

IN PART 3 OF THE PETITION, REQUEST IS MADE THAT THE COMMISSION REOPEN THE PROCEEDINGS, VACATE ITS ORDER AND SET THE CASE FOR FURTHER HEARING. PETITIONERS BELIEVE THAT CONDITIONS HAVE CHANGED IN IMPORTANT RESPECTS TO SUCH A DEGREE THAT THE CONDITIONS AT THE PRESENT TIME SHOULD BE MADE A PART OF THE RECORD.

We would particularly call the Commission's attention to the following two matters:

During the next year 5,000 cars of oil will be transported, intrastate, 1-line in Illinois. The present rate is 2c plus 10 per cent, producing a minimum earning per car of approximately $16.50. The total earnings will exceed $80,000 on this traffic if it moves all-rail. The consignor and consignee of this particular movement have definitely reached the conclusion that if the rate be increased to the interstate basis, they will resort to other means of transportation with the resulting loss of revenue to the rail carriers.

Since the hearing closed, shippers of pig iron between South Chicago and Indiana Harbor have changed from

rail to water for the entire interstate movement. The present rate is 3.5c for the interstate 2-line movement. Prior to the increase from 2.5c the movement was all rail. These and other facts showing loss in rail revenue will, if the case be assigned for further hearing, be made a matter of record by proper testimony.

Another matter which we desire to present at the further hearing is a comparison of the revenue which the respondents receive out of interstate line-haul rates where the earning of the Chicago carriers for their part

of the hauls, as divisions of the through rate, are no greater than, and in some cases less than, the switching charges found reasonable by this Commission for the movement entirely within the Chicago switching district. For example, the Chicago and Eastern Illinois and other carriers receive a division of not more than 70c per ton (3.5c per hundred pounds) on coal for the movement from the Ohio River to destinations in the Chicago switching district, and out of that division pay for such switching as may be required where the C. and E. I. does not with its own power reach the rails of the consignors.

This evidence should be made a part of the record to show that, measured by the compensation received for the service rendered on such interstate traffic, the present intrastate switching rate pays ample compensation, and instead of the relationship resulting in unjust discrimination against interstate commerce, there is a dis-

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crimination against intrastate commerce by reason of the lower earnings on interstate commerce for greater service.

IV.

In the concluding portion of the petition of which this brief is a part, we point out the need for making the report and order of the Commission more definite and concise. The order of the Commission requires the respondents "according as they participate in the transportation" to establish and maintain switching rates on an all-commodity basis in intrastate commerce in the Chicago switching district within Illinois and within Indiana,

> "which shall be not less than the rates contemporaneously applied by said carriers to the transpor-

tation by them of all commodities in interstate switching service between points in the Chicago switching district in the States of Illinois and Indiana."

In Paragraph 9 of Section II of the petition, we show that some 26 of the respondents do not apply any 1-line rates to the transportation by them of commodities in interstate switching service because those carriers do not perform any 1-line interstate switching service between points in the Chicago switching district in Illinois and Indiana.

Having in mind the purpose of the Commission to remove unjust discrimination against interstate com-

merce, it would seem clear that the order does not reach such carriers and does not constitute authority to them to raise the intrastate rate; the requirement to remove a discrimination which does not exist is void; since there is no interstate commerce 1-line, there is no commerce which could be the subject of discrimination. Moreover, we find confirmation in the view we here express in the statement on Sheets 43 and 44 of the report, where the Commission gives the reasons for not being convinced that any substantial proportion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if the rates found reasonable for interstate traffic be applied to intrastate traffic. One of the reasons stated as convincing the Commission that there would be no substantial proportion of the traffic diverted, was that a very large proportion of the traffic intrastate is handled in 1-line movements, and it follows that if no increase in such rate be made there would be little likelihood of any diversion on account of the Commission's order which did not apply thereto.

We therefore ask the Commission to make it clear that no increase in the intrastate rate for 1-line movement in intrastate commerce may be made by any carrier which does not "apply" a 1-line interstate rate in the Chicago switching district. Inasmuch as each of the respondents is a party to 2-line and 3-or-more-line movements, both interstate and intrastate, there is no need for any clarification of the order so far as movements other than 1-line intrastate are concerned.

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In connection with what we have just said, we call attention to the position of the Chicago Junction-Chicago River and Indiana, as expressed by its counsel (Rec., 2559, 2561) to the effect that no increase was proposed in the $3.15 rate and $7.15 rate for 1-line movement within a particular district on the line of that carrier, although there would be an increase when the movement was between different districts on the rails of that carrier. In the first decision of this Commission herein, on page 697, the Commission discusses those rates and because of the nature of the movements most of which were purely interplant and

> *"all intrastate in character, over comparatively short hauls,"*

made no findings as to that particular traffic. We do not, however, in the report and order of July 3, 1933, find any exemption whatever of any particular movements, and we interpret the decision as intending to increase all intrastate rates in Illinois and Indiana, where the carriers contemporaneously maintain a 1-line rate on interstate traffic or jointly with other carriers also are a party to a 2-line or 3-or-more-line interstate rate.

It is our information that at a recent meeting of the

traffic representatives of the respondents in this case, the Chicago Junction-Chicago River and Indiana expressed the intention to make no increase in its intradistrict, 1-line intrastate rates. As to all other traffic it is the intention of the carriers without exception to raise the

intrastate rates to the level of the interstate basis approved by this Commission regardless of whether the individual carrier has a contemporaneous interstate rate in effect on its line. We know of no distinction which can possibly be drawn between a 1-line intrastate switching service, however short in character, performed by the Chicago Junction, and the same length of service performed by other respondents intrastate in Illinois and intrastate in Indiana.

The Commission must not overlook the fact that the so-called districts created by the Chicago Junction for its convenience in handling traffic on that line were set up by the Chicago Junction itself and are merely arbitrary districts made by that carrier without any direction by any regulatory authority. We have not observed anywhere in any of the reports and orders of this Commission any finding which authorized this treatment by a particular respondent of the rates it had in effect intrastate, depending upon whether those rates were short or long. It is important, we think, that the Commission make clear just what it means by its order in these respects.

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CONCLUSION.

It has always been our understanding that before an order of this Commission should be made the subject of judicial proceedings, this Commission should have its attention called to any errors or mistakes which it had made in its report or in its order. It is our firm conviction that this Commission, with its attention especially directed to the matters herein set forth, should set aside its order and correct its report to conform to the facts of record.

In *Railroad Commission of Wisconsin* v. *Chicago, Burlington and Quincy Railroad Company,* 257 U. S. 563, 591; 66 L. Ed. 371, 384, the court, holding that unified control of interstate and intrastate commerce by the Interstate Commerce Commission only extends to the maintaining of efficient regulation of interstate commerce under the paramount power of Congress, said:

> "It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce, and must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce."

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To the same effect is the decision of the Supreme Court in *New York* v. *United States,* 257 U. S. 591, 66 L. Ed. 385.

The disparity in rates on intrastate traffic and interstate traffic in this case is not so substantial as to operate

as a real discrimination against, and obstruction to, interstate commerce, and when the extent of the disparity is considered along with reduction of volume of tonnage moving by rail that will follow the increase in the intrastate rates to the level of the interstate rates, the conclusion should be reached that there is no violation of the Interstate Commerce Act due to the relation between the intrastate and interstate switching rates.

Laying aside the important presumption which attaches to the validity of the action of state authorities in regulation of rates, and considering only the testimony of record, there is no possibility of a valid finding by the Commission that the increase in rates on intrastate traffic to the interstate level will increase the revenue of the carriers.

Decisions of the Supreme Court and previous decisions of this Commission in other cases, clearly indicate that before the Commission can make an order such as that of July 3, 1933, in this case, it must make detailed findings and these findings must be based on testimony of record. The report and order of the Commission are contrary to the uncontradicted testimony of record.

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The order of July 3, 1933, should be vacated, the report modified, and the investigation discontinued.

Respectfully submitted,

ILLINOIS COMMERCE COMMISSION,
B. F. LINDHEIMER, *Chairman,*
CHARLES E. BYRNE,
ANDREW OLSON,
ERNEST J. KRUETGEN,
Commissioners.

By IRVIN ROOKS,
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Centennial Building, Springfield,
Illinois.

PUBLIC SERVICE COMMISSION OF INDIANA,
PERRY MCCART, *Chairman,*
MOIE COOK,
S. L. TRABUE,
Commissioners, Public Service Commission of Indiana.

PHILIP LUTZ, JR.,
Attorney General of Indiana.

By G. W. HUFSMITH,
Assistant Attorney General of the State of Indiana,
Attorneys for Public Service Commission of Indiana.
State Capital Building, Indianapolis, Indiana.

BOARD OF TRADE OF THE CITY OF CHICAGO,
By HERBERT J. CAMPBELL,
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105 S. La Salle Street, Chicago, Illinois.

ACME STEEL COMPANY, *et al.,*
(Complainants, Docket 24950),
By LUTHER M. WALTER,
JOHN S. BURCHMORE,
NUEL D. BELNAP, *Attorneys.*

WALTER, BURCHMORE & BELNAP,
1522 First National Bank Building,
Chicago, Illinois.

August, 15, 1933.

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CERTIFICATE OF SERVICE.

I do hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof properly addressed to each party of record.

Dated at Chicago, Ill., this 15th day of August, 1933.

LUTHER M. WALTER.

APPENDIX E.

BEFORE THE

INTERSTATE COMMERCE COMMISSION

SWITCHING RATES IN THE CHICAGO SWITCHING DISTRICT.	Docket No. 19610.

ANSWER ON BEHALF OF RESPONDENT CARRIERS TO PETITION OF ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION OF INDIANA, AND THE ACME STEEL COMPANY, ET AL., FOR REOPENING; FURTHER HEARING; SETTING ASIDE OF ORDER OF JULY 3, 1933; REARGUMENT AND RECONSIDERATION.

H. I. ALLEN,
J. R. BARSE,
D. P. CONNELL,
P. F. GAULT,
JAMES STILLWELL,
H. D. SHEEAN,
E. A. SMITH,
J. N. DAVIS,
Attorneys for Respondents.

CHICAGO, ILLINOIS,
August 24, 1933.

BEFORE THE

INTERSTATE COMMERCE COMMISSION

SWITCHING RATES IN THE CHICAGO SWITCHING DISTRICT.	Docket No. 19610.

ANSWER ON BEHALF OF RESPONDENT CARRIERS TO PETITION OF ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION OF INDIANA, AND THE ACME STEEL COMPANY, ET AL., FOR REOPENING; FURTHER HEARING; SETTING ASIDE OF ORDER OF JULY 3, 1933; REARGUMENT AND RECONSIDERATION.

Now come the carriers operating in the Chicago Switching District, respondents in the above entitled docket, and in answer to petition of the Illinois Commerce Commission, the Public Service Commission of Indiana, Acme Steel Company, *et al.* (complainants in Docket 24950), Board of Trade of the City of Chicago (intervener herein) for reopening, for further hearing, for setting aside of order of July 3, 1933, for reargument and/or reconsideration, say that said petition should be denied.

The carriers point out that prior to the inception of Docket 19610, the carriers, the Chicago Shippers' Conference Association, the Chicago Association of Com-

merce, and individual industries and shippers in the Chicago Switching District, had several conferences in determining what rates should be established within the

Chicago Switching District in keeping with the report and order of this Commission in Docket No. 15110, *Jones & Laughlin Steel Corporation* v. *B. & O. R. R. et al.* 96 I. C. C. 682, decided June 15, 1925. As a result of these several conferences—at which conferences this Commission had representatives present—a uniform basis of rates applicable to all commodities was tentatively agreed upon, and the carriers published in tariff form, rates of 3 cents, 3½ cents and 4 cents per 100 pounds, for one, two and three-or-more line hauls respectively, minimum 60,000 pounds. These rates were suspended (I. & S. Docket 2900) and, due to the fact that in an Investigation and Suspension proceeding the power and authority of this Commission is limited, on May 11, 1927, this Commission, on its own motion, entered upon an inquiry and investigation into and concerning the lawfulness of all rates and charges for switching within the Chicago Switching District, on all carload freight moving in interstate commerce, and their relation to like rates and charges for switching in intrastate commerce, with a view to prescribing such reasonable, proper, nondiscriminatory, nonprejudicial, and otherwise lawful, switching rates for said traffic as the facts and circumstances warranted. This investigation was given Docket No. 19610. In initiating this investigation concerning the lawfulness of the switching rates in the Chicago Switch-

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ing District, this Commission gave proper notice to the state authorities of both Illinois and Indiana, and like notice was given to the carriers and the shippers; numerous hearings were had; the lawfulness of the switching rates in the Chicago Switching District was thoroughly investigated and all parties of interest were given full and ample opportunity to present their views, in oral

hearings, written briefs, and oral argument. At the hearing in Docket 19610 concerning the matters that prompted the Commission, on its own motion, to investigate the lawfulness of the switching rates in the Chicago Switching District under Docket 19610, the Chicago Shippers' Conference Association and the Chicago Association of Commerce, among others, appeared and testified. At these hearings, and at all subsequent hearings, and on brief and in oral argument, not a single party of record, at any time, contended for, or advocated, a different all-commodity basis of rates to apply within the Chicago Switching District, on state traffic, than at the same time applied on interstate. The principal contention by the Chicago Association of Commerce and the Chicago Shippers' Conference Association was that there should be an all-commodity basis of rates within the District for application alike on state and interstate traffic; a similar position was taken by all other interested parties. The major, and perhaps the sole, difference between the carriers on the one hand and the shippers and state commissions on the other, was the measure of the rates and this has been the issue through-

out the entire proceeding, and as late as the oral argument, in April, 1933, counsel for the state commissions, and for certain shippers, contended for uniform rates within the District for both state and interstate application. The shippers that testified at the last hearings in Dockets 19610 and 24950 suggested rates that were lower than those found reasonable by this Commission in its order of July 31, 1931 (177 I. C. C. 669), but such suggested rates were the same for state and interstate application.

It is clear from the record in this case (Docket 19610) and it is likewise clear from the record in Docket 24950, that the sole and only objection that the two state commissions and the individual shippers who took part in the subsequent hearings in Docket 19610 and Docket 24950, have, is to the measure of the rates, and the petition to which this is an answer, is predicated entirely upon the measure of the rate. In other words, if this Commission had been governed by the Illinois Commerce Commission and the Public Service Commission of Indiana and had adopted the state rates as the measure of reasonableness for interstate rates, then this petition for further hearing, etc., would never have been filed.

There is nothing new or different in the petitioners' assertions that this Commission's order is void, or that the Commission has committed error in its findings or its failure to make certain findings, than what has been presented by these same petitioners in briefs, exceptions to

proposed reports, motions for reconsideration and rehearing, petitions to have tariffs suspended, etc., that have been filed by these same petitioners at some stage of the proceeding in Docket 19610. We will endeavor to answer briefly and comment upon each of the assertions set forth in the petition.

The petitioners, on page 2 of the petition, set forth three grounds as a basis for their assertion that the Commission's decision and order of July 3, 1933, is void. The first assertion is that there is "no evidence in support" of the order. The testimony and exhibits received of record in the original hearing in Docket 19610 and in the subsequent hearing in the same docket contain ample and sufficient evidence to sustain the Commission's order in all respects.

The petitioners contend that the order is void because "no proper findings in support thereof have been made by the Commission." The findings set forth in said report are sufficient and ample under the decisions of the Supreme Court of the United States to support the order of the Commission. Petitioners cite no authority for their assertion, nor do they point out wherein as a matter of law the findings are improper or not in keeping with the law.

The petitioners allege that this Commission committed error in its decision and order of July 3, 1933, in finding that the maintenance of intrastate switching rates and carload minimum weights in Illinois and Indiana, be-

tween points within the Chicago Switching District, on a lower basis than the corresponding all-commodity rates and minimum weights found not unreasonable for switching service on interstate transportation results, and will for the future result, in unjust discrimination against interstate commerce.

The record shows that in normal times by reason of the lower state rates within the Chicago Switching District the interested carriers would be deprived of practically three million dollars per annum and that in abnormal times such as in 1931 and 1932, the carriers would be deprived of practically one million dollars per annum. The record shows that by reason of the lower state rates, shippers were routing their traffic so as to take advantage of the lower state rates, which caused a substantial loss in revenue to the carriers; in addition, in order to transport such traffic so as to make applicable the lower state rates, considerable additional expense is incurred.

The record in this case is replete with other evidence

showing the unjust discrimination against interstate commerce by reason of the lower state rates within the District. The petitioners further contend that the record is convincing that the carriers will be deprived of a substantial increase in revenue if the intrastate rates are increased to the level of the interstate rates, and that a substantial portion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if the unjust discrimination against interstate commerce

is removed by increasing the state rates to the level of the interstate rates. There is no substantial evidence in this record to bear out or confirm the allegations of the petition. There was but a small number of shippers who testified in the subsequent hearing in Docket 19610 and in Docket 24950, and these shippers represented but a few of the commodities that moved within the Chicago Switching District.

The exhibits introduced by the carriers and the traffic test that was conducted at the request of this Commission shows that there are sixty-nine or more commodity groups and a great number of these groups contain as a general proposition more than one commodity. The evidence of record does not show that there is any movement, or threat of movement, of a majority of the 69 commodity groups, by other means of transportation if the state rate should be increased. There were only a few commodities of the sixty-nine commodity groups that were affected by other forms of transportation, either real or threatened, and it cannot be said either in truth or in fact that any substantial portion of the traffic now moving by rail will be diverted to trucks or other forms of transportation. On the contrary, the evidence is con-

vincing that no substantial portion of the traffic now moving by rail will seek other forms of transportation. The evidence was uncontradicted that the actual cost of performing trucking service was greater than the rates prescribed by this Commission (Rec. 3195-99) and, therefore, only in what might be termed "isolated cases"

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where the service is more convenient by truck, such as in the case of shipments of common brick, would any traffic be diverted from the railroads by reason of the application of the rates herein prescribed.

On pages 3 to 10 of the petition some twenty-two alleged errors are stated, it being claimed that the Commission failed to find that certain contentions of the petitioners were supported by the evidence.

The petitioners claim that the Commission erred in failing to find that the switching service on intrastate traffic in the Chicago Switching District, in Illinois and in Indiana, is substantially less than that performed on interstate traffic, and that lower state rates are justified by reason of the difference in transportation service. The evidence of record does not support this contention of petitioners. The record shows that in performing switching, if a one-line haul, there are two switches, one at the beginning and one at the end; on a two-line haul there are three switches, one at point of origin, one at destination, and one intermediate or interchange switch; that the expense involved in handling the business within the Chicago Switching District is in switching. That the transportation between the two switches for the single-line haul or the three switches for the two-line haul, is but a minor part of the cost of performing the service, and distance as such, has little, if any, bearing

upon the cost of service performed. Yet the petitioners throughout the entire hearing in briefs, in oral argu-

ment, and in this petition, stress no other point than distance for single-line, two-line and three-or-more line hauls, state *versus* interstate. The distance stressed by petitioners is the average distance and not the actual. The District as a whole was considered as a unit by the consent of all interested parties and by the consent of all interested parties there was to be but one commodity rate to apply alike on all traffic for single line, two-line and three-or-more-line hauls respectively. The switching at point of origin and at destination, within the district, and the interchange switching, the record shows, is identical whether it be state or interstate transportation involved. That distance is not substantial or controlling and therefore there is no foundation in this record for the assertion by petitioners that there is a "substantial difference in the service performed" state *versus* interstate.

The petitioners further assert that the intrastate rates charged for switching service in the Chicago Switching District, within Illinois and Indiana, are not less than just and reasonable rates. The evidence of record shows that the lower state rates within the District result, and will for the future result, in unjust discrimination against interstate commerce. The record further shows that if the lower level of intrastate rates is to be maintained, it will discriminate against interstate commerce in a very substantial way. Based upon a normal year, the record shows that the revenues of the carriers would be depleted by approximately $3,000,000 per annum (Ex.

99-A) and in abnormal times, such as the years 1931 and 1932, the revenues of the carriers would be depleted by approximately $1,000,000 per annum. (Ex. 101-A, Ex. 103-A.) And as pointed out by the Supreme Court of the United States in the case of *Railroad Commission of Wisconsin* v. *C. B. & Q. R. R.*, 257 U. S. 563, and in *New York* v. *United States*, 257 U. S. 591, the Commission is well within its authority in raising the state rates as it has ordered done in the instant case.

Paragraphs 7 and 8 on page 4 of said petition are reiterations of contentions made during hearings, on brief, and in oral arguments. There are 69 or more commodity groups of traffic that move within the District and in a majority of instances the commodity group contains more than one commodity; and with regard to a majority of these 69 commodity groups there is no evidence in this record that there is any movement by other forms of transportation, nor is there any intent or threat by the shippers to so move their commodities. The evidence is confined to a very few shippers and the evidence of record shows that an increase in the state rates within the District will yield a substantial return in revenue to the interested carriers.

In paragraph 9 on pages 4, 5 and 6 of said petition, petitioners point out that there are a number of carriers serving the Chicago Switching District whose single-line movement would not cross the Illinois-Indiana state line. This is no new fact and is one that was obvious

from the initiation of the Commission's investigation in Docket 19610, and such fact is not in any way dissimilar to the facts considered in the Railroad Commission of Wisconsin case, *supra*, and the New York case,

supra, and other cases in which a state-wide basis of rates was under consideration. Petitioners overlook the fact that by the consent of all interested parties the Chicago Switching District was considered as a unit and that it was the consent of all participating parties that there should be but one all-commodity rate for single line, two-line, and three-or-more-line hauls respectively, throughout the District. As heretofore pointed out, the only contention on which there was any disagreement was the measure of the rate. No one on this record has at any time advocated and insisted upon a diffrent all-commodity basis of rates for state than at the same time applies on interstate traffic within the Chicago Switching District.

In paragraph 10, on page 7, of said petition it is alleged that there is a large number of commodities moving in one-line intrastate movements (Illinois or Indiana) that are not moving in one-line interstate movements within the Chicago Switching District. This is not a fact as the record amply demonstrates. A number of exhibits were introduced, including the traffic test, which show the different commodities that moved under the 69 commodity groups within the Chicago Switching District, and as was pointed out in the respondents' brief in the last hearing in Docket 19610, a study of these

exhibits (Ex. 101-A, Ex. 102, Ex. 103-A, Ex. 104, Ex. 105-A, Ex. 106) will show that the same kind of commodity that moves intrastate within the District, either in Indiana or Illinois, likewise moves interstate, and the reverse of this is also true. It is common knowledge, and the record shows, that on the Indiana side of the District there are large steel mills, oil refineries, and other industries, and likewise on the Illinois side of the Chi-

cago Switching District are similar industries. (Rec., 2707-8; Rec., 2776-7.) The record does not bear out the assertions of the petitioners.

In paragraph 11, on page 7 of the petition, the same contention is made as in paragraph 10—the latter paragraph deals with Illinois and paragraph 11 deals with Indiana—and the same answer as above given to paragraph 10 applies equally to paragraph 11.

In paragraph 12, on page 7 of the petition, it is alleged that the record does not disclose the revenue separately for each of the respondents, that is derived from Illinois intrastate traffic, and separately state it for one-line, two-line, and three-or-more-line hauls. The record does disclose the revenue which these respondents would be deprived of if the state rates were not brought up to the level of the interstate rates. Whether this information is shown for the individual lines or for the lines collectively, is of no significance.

This same answer applies to paragraph 13 on page 7 of the petition.

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In paragraph 14, page 7 of the petition, the petitioners allege that the record shows that to increase the state rates within the Chicago Switching District will reduce the volume of business handled and the revenue derived therefrom; on the contrary, the record shows the reverse. The volume of business will not be reduced and the revenue derived by an increase of the state rates to the interstate basis will augment the revenues of respondents.

In paragraph 15, page 8 of the petition, it is alleged that the revenues of respondents on intrastate switching in the Chicago Switching District are ample to maintain an adequate transportation service. The evidence

of record, however, shows that the rates within the Chicago Switching District, before the Commission's order of July 31, 1931, which at that time were the same as the present state rates, were below a reasonable rate; therefore, there is no foundation, either in theory or in fact, for the assertion of paragraph 15.

Paragraphs 16 and 17, on pages 8 and 9 of the petition are assertions that have been repeatedly urged by these same petitioners, in brief, exceptions to proposed reports, and oral arguments, and are a repetition of the criticism of the cost study.

In paragraph 18, page 9, petitioners allege that there is no evidence in the record to show that the present intrastate rates fail to produce their fair proportionate share of revenue. The record shows very fully that the

state rates within the Chicago Switching District do not produce their fair proportionate share of revenue.

In paragraph 19 on page 9 of the petition, petitioners allege that there is no evidence in the record to show that the intrastate rates now in effect within the Chicago Switching District constitute an unjust discrimination against interstate commerce. The record is complete in showing that the intrastate rates are a direct burden upon interstate commerce and that such intrastate rates cause an unjust discrimination against interstate commerce, and in addition the record also shows that the intrastate rates obstruct and block interstate commerce, and furthermore, by reason of the low state rates, the record shows that such a condition substantially and unreasonably impairs the usefulness of railroad facilities. The record shows that in order to handle the great volume of business in the congested area known as the Chicago Switching District, facilities for the handling

of such business have been provided, and a normal, logical, and customary way of handling such traffic to the best interest of the shipping public and the carriers has been provided, but by reason of the lower state rates, the record shows shippers have imposed upon the carriers routing of their traffic so as to protect the state rates (Ex. 110, Rec., 2181) and thereby cause additional and expensive service on the part of the carriers that is wholly unnecessary and a burden upon the carriers.

In paragraph 20, page 9 of the petition, petitioners allege that there is no evidence of record upon which the

Commission can find that the respondents will have a greater income by increasing the state rates to the level of the interstate rates. Quite to the contrary, the evidence shows that if the state rates within the Chicago Switching District are placed on the level of the basis found reasonable by the Interstate Commerce Commission for application within the District, the carriers' revenues will be augmented, in normal times over three million dollars a year, and even in depressed times, over one million a year.

Paragraphs 21 and 22, appearing on pages 9 and 10 of the petition have been fully answered by the decisions of the Supreme Court of the United States. In those decisions in which the paramount authority of this Commission in dealing with state rates has been considered. A few of the cases are: *Railroad Commission of Wisconsin* v. *C. B. & Q. R. R.*, 257 U. S. 563; *New York* v. *United States*, 257 U. S. 591; *The Shreveport Case*, 234 U. S. 342; *Georgia Public Service Commission* v. *United States*, 283 U. S. 765; *Florida et al.* v. *United States*, 282 U. S. 194; *Alabama et al.* v. *United States*, 283 U. S. 776.

The argument made by petitioners in support of their various contentions disregards the essential and controlling facts of record; goes outside of the record in stating facts that are not of record, nor actually exist; and misconstrues and misapplies the law applicable from the facts of record.

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On page 12 of the petition, it is contended by petitioners that there has been a substantial change since the testimony was submitted in May, 1932. The record, when it closed, showed that the changed conditions contended by petitioners during the hearing resulted in increased cost (Ex. 107, Ex. 109, Rec., 3111) of operation because of the fact that unit costs could not be reduced in proportion to the falling-off of traffic. Since the close of the hearing there has been at least two decisions of the Supreme Court of the United States sustaining legislation relative to the regulation of trucks (*Continental Baking Co.* v. *Woodring*, 286 U. S. 352; *Sproles* v. *Binford*, 286 U. S. 374). It is common knowledge that Congress has and will consider seriously the federal regulation of trucks, all of which can result in nothing more than higher transportation costs and therefore higher rates, and the record, as before stated, shows that the present costs, when this record closed, for truck transportation, was higher than the rates prescribed as reasonable rates by this Commission for switching within the Chicago Switching District.

On page 13 of the petition, it is intimated that there is some doubt on the part of some of the respondents as to whether or not they are required to increase their intrastate, one-line haul rate in Indiana, also in Illinois, the tariffs that have been filed in compliance with the Commission's order of July 3, 1933, will show that there

is no confusion or doubt as to the requirements of the Commission's order here under consideration.

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In the argument, on page 73, reference is made in regard to the intra-district movements on the line of the Chicago Junction Railroad. An answer to said petition in this regard is sufficient, we believe by reference to what the Commission said on this same subject in its decision of July 31, 1931, reported in 177 I. C. C. 669, at page 697.

As stated at the beginning, this case from its inception was considered by all interested parties as establishing an all-commodity basis of rates to apply for one-line, two-line, and three-or-more-line hauls respectively throughout the entire District, state and interstate included, and at no time did any one interest or group of interests, contend otherwise. The sole question was one of the level of rates. It is to the interest of the Chicago Association of Commerce, the Chicago Shippers' Conference Association, and the general shipping public that the rates within the District should be the same for state and interstate, and this fact is not disputed in this record, but on the contrary, is admitted. The evidence of record shows, and it is uncontradicted, that all traffic, state and interstate, is handled in the same manner; that the service is in all material respects, the same. (Rec., 2199), (Rec., 2251), (Rec., 2403), (Rec., 2410 and 2404-5.) Since the inception of the Commission's investigation known as Docket 19610, May 11, 1927, there have been a number of hearings, and oral arguments, and all parties have had ample opportunity to appear and give evidence.

The rates in compliance with the Commission's order will become effective September 20, 1933, and we therefore urge that the petition be denied.

Respectfully submitted,

H. I. ALLEN,
J. R. BARSE,
D. P. CONNELL,
P. F. GAULT,
JAMES STILLWELL,
H. D. SHEEAN,
E. A. SMITH,
J. N. DAVIS,
Attorneys for Respondents.

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party of record.

DATED at Chicago, Illinois, this 24th day of August, 1933.

J. N. DAVIS,
516 W. Jackson Boulevard,
Chicago, Illinois.

APPENDIX F.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 9th day of September, A. D. 1933.

No. 19610.

SWITCHING RATES IN THE CHICAGO SWITCHING DISTRICT.

No. 24950.

ACME STEEL COMPANY, *et al.*,

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, *et al.*,

Upon further consideration of the record in the above-entitled proceedings, and in order to afford opportunity for appropriate consideration of the petition of the Illinois Commerce Commission, Public Service Commission of Indiana, Acme Steel Company, and Board of Trade of the City of Chicago for reopening for further hearing, for setting aside of order of July 3, 1933, for reargument and reconsideration, and of petition of the South Chicago Coal & Dock Company for reopening, reconsideration, and setting aside of the order dated July 3, 1933:

It is ordered, That the effective date of the aforesaid order of July 3, 1933, in these proceedings, be, and it is hereby, postponed to October 20, 1933.

By the Commission.

(Seal)

GEORGE B. MCGINTY,
Secretary.

APPENDIX G.

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

In the matter of the proposed changes in rates for the transportation of carload freight between points within the Chicago Switching District and also between points in the Chicago Switching District and points outside of the said district, resulting in advances and reductions stated in schedules filed by the Atchison, Topeka and Santa Fe Railway Company, et al	17250 1st Supplemental 2nd Supplemental 3rd Supplemental
In the matter of the proposed advances of rates on tile, brick and articles taking the same rates stated in schedules filed by the Baltimore and Ohio Chicago Terminal Railroad Company, et al	17269
Illinois Slag & Ballast Company vs. Chicago, West Pullman and Southern Railroad Company, et al	17513

ORDER

By the Commission:

Docket No. 17250: Schedules have been filed by Illinois carriers in which it is proposed to change rates for the transportation of freight between points within the Chicago Switching District and points outside of said district resulting in advances and reductions; and it is further pro-

posed in the aforesaid schedules that such changes in rates become effective April 30, 1927.

It appeared from an examination of the aforesaid schedules, that the Commission should enter upon a hearing concerning the propriety of the proposed changes in rates and that pending the hearing and the decision thereon, the said changes in rates should not go into effect.

On April 19, 1927, the Commission suspended the aforesaid proposed changes in rates until August 27, 1927, pending a hearing and decision thereon. The Commission's investigation of this matter had not been concluded prior to August 27, 1927, and therefore, the period of suspension

was further extended from time to time by order of the Commission and voluntary action of the carriers until February 1, 1932.

Docket 17269: Schedules have been filed by Illinois carriers in which it is proposed to advance the carload rates on tile, brick and articles taking the same rates between Chicago Heights, Illinois, and points in the Chicago Switching District; and it is further proposed in the said schedules that such advanced rates shall become effective May 5, 1927.

It appeared from an examination of the aforesaid schedules that the Commission should enter upon a hearing concerning the propriety of the proposed advances in rates and that pending the hearing and the decision thereon, the said advanced rates should not go into effect.

On April 27, 1927, the Commission suspended the aforesaid proposed advanced rates until September 2, 1927, pending a hearing and the decision thereon. The Commission's investigation of this matter had not been concluded prior to September 2, 1927, and the schedules were further

suspended from time to time by order of the Commission and voluntary action of the carriers until February 1, 1932.

Docket 17513: By complaint filed July 18, 1927, the Illinois Slag & Ballast Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, with principal office at Chicago, Illinois, engaged in the crushing, shipment and sale of slag, alleges that the carload rates charged for the transportation of crushed slag from its plant in South Chicago, (Irondale), Illinois, to points in the Chicago Switching District are unjust and unreasonable. Reparation and reasonable rates for the future are sought.

A similar complaint was filed with the Interstate Commerce Commission attacking the interstate rates from South Chicago, (Irondale), Illinois, to points in the Chicago-Gary District.

Pursuant to notice as required by law, hearings were held in Chicago, January 11, May 15, 16, 17, 18, 19, 21 and 22, and September 18, 19, 20 and 21, 1928.

By agreement of all parties, Dockets 17250, 17269 and 17513 were consolidated and heard jointly with the Interstate Commerce Commission under its Docket 19610, and I. & S. Docket 2900, and the Public Service Commission of Indiana under its Docket 8939.

The appearances at the said hearings were as follows:

J. N. Davis, J. R. Barse, P. F. Gault, E. A. Smith, D. P. Connell, Guernsey Orcutt, H. I. Allen, H. D. Sheean, and Nelson Trottman for railroads serving the Chicago Switching District.

Sherman A. Gillett for Chicago and North Western Railway Company.

J. H. Brown for The Belt Railway Company of Chicago.

M. S. Connelly for Pennsylvania Railroad Company.

K. L. Richmond, J. F. Connors, and F. E. Webster for Chicago and Eastern Illinois Railway Company.

T. F. Dooley for the Chicago & Calumet River Railroad Company.

R. C. Davidson for The Chicago, Rock Island and Pacific Railway Company.

T. E. Bond for the Elgin, Joliet and Eastern Railway Company.

W. G. Wagner for the Chicago, Burlington & Quincy Railroad Company.

F. C. Furry for the Illinois Central Railroad Company and the Chicago & Illinois Western Railroad Company.

Guy A. Gladson for The Chicago and Alton Railroad Company (William W. Wheelock and William G. Bierd, Receivers).

B. S. Lottenville for the Chicago Heights Terminal Transfer Railroad Company.

C. W. Galligan for the Illinois Freight Association.

John F. Bonner for the Minnesota Railroad & Warehouse Commission.

W. A. Anderson for the Railroad Commission of Wisconsin.

D. L. Kelley for the South Dakota Board of Railroad Commissioners.

Claude L. Draper for the Public Service Commission, State of Wyoming.

Luther M. Walter and G. W. Oliver for the Chicago Shippers' Conference Association and the Association of Commerce.

R. B. Coapstick for the Indiana State Chamber of Commerce.

J. S. Brown, H. J. Campbell and S. H. Benson for the Board of Trade of the City of Chicago.

Frank B. Townsend and Lee Kuempel for the Minneapolis Traffic Association.

Fred S. Keiser for the Duluth Chamber of Commerce.

J. B. Humphrey for the Hammond Chamber of Commerce, the Hammond Manufacturing Association and others.

H. F. Sundberg for the Chamber of Commerce, Cedar Rapids, Iowa.

J. P. Haynes and A. H. Schwietert for the Chicago Association of Commerce.

R. I. Pierce for the Terre Haute Chamber of Commerce and the Highland Iron & Steel Company.

F. B. McElroy, C. B. Cardy and R. I. Pierce for the Manufacturers Association of Chicago Heights, Illinois.

L. G. Macomber for the Detroit Board of Commerce.

Ralph N. Newmann for the Lions Club of Des Plaines, Illinois.

Murray N. Billings for the Illinois Steel Company.

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Henry C. Keene for the Grasselli Chemical Company.

W. J. Hammond and R. R. Flynn for the Inland Steel Company.

W. Y. Wildman and R. W. Ropiequet for the Illinois Coal Traffic Bureau.

George Patterson Boyle for the Illinois Slag & Ballast Company.

Walter Hayes for Sears, Roebuck Company.

H. R. Park for the Chicago Livestock Exchange.

E. S. Gubernator, R. S. Waterbury and E. W. Glaesel for the Lehigh Portland Cement Company.

Robert J. McBride and Warren Burkhart for the Illinois Lumber & Material Dealers Association, the Burgess Battery Company, the Beloit Iron Works and the Jos. F. Herman Company.

J. D. Forrest and G. H. Staat for the By-Products Coke Corporation.

Robert Hula for Clayton Mark & Company.

W. M. O'Keefe for the Chicago Mercantile Exchange and the Live Poultry & Dairy Shippers Association.

Herman Mueller for the St. Paul Association of Public & Business Affairs.

C. B. Cardy and W. F. Gorman for the Manufacturers Association of Chicago and the Stone Producers in the Chicago Switching District.

E. L. Maynard for the Brownell Improvement Company, the Dolese Shepard Company, the Federal Stone Company, the A. C. O'Laughlin Company, the Peoples Crushed Stone Co. and the Superior Crushed Stone Company.

J. W. McRae for the Pennoyer Merchants Transfer Company.

W. F. Coyne and W. R. Sanborn for the Lehigh Stone Company.

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Quinn Morton for the C. L. Willey Company.

C. A. Shank for the National Brick Company.

W. M. Councill for the National Fireproofing Company.

H. H. Bascom for the Youngstown Sheet & Tube Company.

C. T. Stripp for the National Malleable & Steel Casting Company.

A. R. Miller and H. G. Brown for the Illinois Brick Company.

H. W. Robertson and H. H. Singer for the Sinclair Refining Company.

Burton H. Atwood and C. B. Ackerman for the Elmhurst Chicago Stone Company.

J. L. Roberts and N. L. Shannon for The Barrett Company.

Alfred S. Knowlton for the American Tar Products Company and the Chicago By-Product Coke Company.

Adam Bissolo, A. M. Cordell and Alfred S. Knowlton for the Standard Steel Car Company and subsidiaries.

T. W. Mackey for The Western Shade Cloth Company.

Fred C. Rose for the Marsh and Truman Lumber Company.

John D. Ross for the General Chemical Company.

F. D. Porter for S. Berkenstein Sons, Incorporated.

P. St. Pierre for A. L. Randall Company and Dure Paper Products Company.

L. E. Whitney for the National Pickle Packers Association.

F. W. Rogers for the Flintkote Company.

M. H. Strothman for the Washburn Crosby Company.

Sam Frier for the Wholesale Sash & Door Association.

E. C. Wilmore for the Sefton Manufacturing Company.

C. D. Miller for the American Maize Products Company.

E. F. Grubbs for Chapin & Company.

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M. S. Allison for the Federal Cement Tile Company.

A. L. Dreher for the Hyman-Michaels Company.

F. M. Garland and A. M. Cordell for the Pressed Steel Car Company.

M. D. Perry for the Union Drawn Steel Company, the Gary Screw & Bolt Company and the Pittsburgh Screw & Bolt Company.

R. D. Reeds and E. F. Pine for the Confectioners Traffic Association and E. J. Brach & Sons.

A. E. Huenergardt for the Confectioners Traffic Association and Zion Institutions & Industries.

R. E. Riley for the Chicago Brick Company, the Chicago Brick Exchange, the Lake Sand Corporation and the L. Richard Company.

F. H. Belden and E. S. Huebner for the Marblehead Lime Company.

F. D. Wilder for the Chicago Railway Equipment Company.

R. C. Livingston for the Interstate Iron & Steel Company.

The F. C. Favor Paper Company for the Chicago Paper Association.

J. H. Kane for the Material Service.

T. P. Scanlon for J. B. Inderreiden Company and the Amber Furniture Company.

H. N. Williams for the Jewel Tea Company.

J. T. Dover and W. J. Brown for the McClintic-Marshall Construction Company.

E. W. Sieboldt and J. R. Van Slyke for the Roxana Petroleum Corporation.

A. E. Sicilia for the Chicago Wool Trade Association.

P. A. McFarlane for the Wisconsin Lime & Cement Company.

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H. J. Meilahn for the J. J. Bradenoch Company.

H. F. Obermayer for the Stratton Grain Company and the Quincy Elevator Company.

W. J. M. Lahl for the American Seating Company.

A. A. Adams for the Chicago Retail Lumber Dealers Association and the Edward Hines Lumber Company.

Alfred E. Treen for the Illinois Slag & Ballast Company.

W. S. Short for the Seaman Paper Company and the H. P. Smith Paper Company.

S. A. Poyer for the Chicago Bridge & Iron Works.

Irwin W. Hart for the Franklin MacVeagh & Company.

F. R. Jerome for the Traffic Bureau of Associated Industries.

L. J. Thomas for the Johns-Manville Corporation.

Arthur W. Fredrickson for the Commonwealth Edison Company.

D. C. Norris for the Wolff Manufacturing Company.

Wm. Lister for the City of Evanston.

W. J. Womer for the Chicago District Ice Association and the Lincoln Boyle Ice Company.

John W. Bingham for the Corn Products Refining Company.

W. J. Rowley for the Albert Dickinson Company.

R. C. Ross for Jos. T. Ryerson & Son.

B. J. Klein for the Southern Cotton Oil Company.

Henry Hauseman for the Pure Oil Company.

J. A. Brough for the Crane Company.

R. E. Kasmar for the R. E. Conway Company.

J. L. Hodgson for American Sand & Gravel Company.

Walter E. McCornack, G. W. Renwick and William Forgner for the Chicago Gravel Company and the Chicago Stone Company.

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W. H. McReynolds for the Manitowoc Portland Cement Company.

F. S. Hollands and H. T. Zaremba for the Standard Oil Company of Indiana.

John J. McGovern for the American Linseed Company and the Best Foods Company.

John H. C. Kirk for Darling & Company.

F. B. McElroy for the Whiteacre Greer Fireproofing Company and the American Manganese Steel Company.

Leonard C. Reincke and David Dunn for the Wm. Wrigley Jr. Company.

M. A. Erickson for the Shotwell Manufacturing Company.

Fred Mueller for the Cracker Jack Company.

J. H. Matheson for The Columbia Mills, Inc.

H. S. Welton for the Victor Chemical Company.

E. D. Porter for the National Association Waste Materials, Inc.

B. J. Roggenbuck for the John F. Jelke Company and Geo. P. Brown Company.

B. H. Rubenstein and L. A. Boulger for The Ruberoid Company.

Charles W. Stadell and H. D. Pixley for Carson, Pirie, Scott & Company.

W. J. Buchanan for the Terminals & Transportation Corporation of Illinois.

Alexander Stuart for Rosenbaum Grain Corporation.

R. W. Campbell for the Butler Paper Corporation.

F. D. Hussian for Rathbone, Hair & Ridgway Company and the Shavings & Sawdust Corporation.

Charles A. Livingston for the Illinois Manufacturers Association.

W. D. Lindsay for the United States Gypsum Company.

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Anton J. Berger for the Construction Materials Company.

James B. O'Rear for the Acme Steel Company.

H. A. Brandon for Bird & Son, Inc.

C. C. Tiffany and Osborn Van Brunt for the Certainteed Products Corporation.

J. J. Low for Briggs & Turivas, Inc.

R. R. Hargis for Wilson & Company.

Paul E. Blanchard and John R. Baker for Armour & Company.

R. D. Rynder and Wm. M. Strack for Swift & Company.

A petition, filed on behalf of the City of Chicago, wherein permission was asked to intervene in these proceedings, was granted by the Commission on May 13, 1930.

ISSUES

The issues involved in this proceeding grew out of a decision of the Interstate Commerce Commission in Docket 15110, *Jones & Laughlin Steel Corporation* v. *Baltimore and Ohio Railroad Company*, 96 I. C. C. 682, decided June 15, 1925. The decision of the Interstate Commerce Commission in the aforesaid case prescribed a distance scale of reasonable maximum rates on iron and steel articles, in carloads, from the Pittsburgh Group to the destination territory under consideration, which included certain points in Illinois, and found the rates on the same articles from points in Illinois and Indiana to the same destinations to be unduly preferential. Following the receipt of opinion of the Interstate Commerce Commission in the *Jones & Laughlin Steel Corporation* case, *supra*, the carriers held conferences among themselves, and jointly with the shippers and receivers of iron and steel articles worked out an adjustment for Illinois territory which was thought to be in harmony with the decision referred to. The rates proposed were filed to become effective April 25, 1926, and the schedules were suspended in I. & S. Docket 2655, *Iron and Steel Between Points in Illinois Committee Territory.*

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On account of the failure to realign at the same time the rates on iron and steel articles within the Chicago District, hereinafter referred to as the "District"; and also because of the failure of several of the interested carriers to revise the rates from Gary, Indiana, to points within the District in harmony with the scale in Docket 15110, *supra*, the suspension order was subsequently vacated except as to the rates from Chicago Heights, Illinois, and Gary, Indiana. Thereupon, at the request of the Interstate Commerce Commission, the carriers gave consideration to the realign-

ment of the rates on iron and steel articles between Chicago Heights, Illinois, and Gary, Indiana, on the one hand, and points within the District on the other; and between points within the District. Tariffs were filed to become effective October 20, 1926, naming rates to apply within the District of 3, 5½ and 6½ cents, per hundred pounds, respectively, for one-, two- and three- or more line hauls, carload minimum 60,000 pounds, with an alternative rate of 8 cents per hundred pounds, minimum 36,000 pounds, applicable to two- and three-line hauls. These schedules were protested and the Interstate Commerce Commission, the Public Service Commission of Indiana and the Illinois Commerce Commission suspended the said schedules. The cases were heard, in part, on February 16, 1927.

In the meantime, numerous conferences were held between the carriers and representatives of the various shippers in the District, with a view to bringing about an adjustment of the rates within the District which would be satisfactory to the shippers and carriers alike.

As the result of these conferences, tariffs were filed effective March 19, 1927, cancelling the schedules under suspension and the proceedings were discontinued and new schedules were filed to become effective April 30, 1927, and on later dates, naming rates of 3, 3½ and 4 cents to supersede the effective rates of 2½, 2½ and 3 cents respec-

tively, for one-, two- and three- or more line hauls, for application within the District, such rates to apply not only on iron and steel articles but on commodities generally, except grain, grain screenings and railway equipment moving on its own wheels, and excepting livestock via The Baltimore and Ohio Chicago Terminal Railroad; and similar rates to apply on the same commodities, except

brick and articles taking the same rates (including common brick), between points within the District on the one hand, and Chicago Heights on the other, and to and from points adjacent to the District on carload traffic on which Chicago rates apply. The so-called "Compromise Rates" were suspended by the Interstate Commerce Commission in its Docket I. & S. 2900, by the Public Service Commission of Indiana in its Docket 8939, and by the Illinois Commission in its Dockets 17250 and 17269.

The Interstate Commerce Commission, upon its own motion in Docket 19610, in view of the limited record which could be developed under the issues presented in the suspension proceeding, entered upon an inquiry and investigation into and concerning the lawfulness of *all rates and charges* for switching within the District of all carload traffic moving in interstate commerce, and the relation of those rates and charges for like switching in intrastate commerce, with the view to prescribing such reasonable, proper, non-discriminatory, non-prejudicial and otherwise lawful switching rates for said traffic, as the facts and circumstances appeared to warrant.

No general investigation of switching rates within the District was instituted by the Illinois Commerce Commission, and its inquiry in this proceeding is confined to the lawfulness of the proposed intrastate rates covered by the tariffs under suspension in Dockets 17250 and 17269.

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DESCRIPTION OF CHICAGO SWITCHING DISTRICT: The boundaries of the District, as defined in Agent Galligan's Tariff Ill. C. C. No. 43, are described in Appendix "A" attached hereto and made a part of this order. The District is approximately forty miles in length and from seven to fifteen miles wide, and is densely populated. It covers an area

larger than any other switching district in the United States, comprising over six hundred square miles, and is served by thirty-five railroads which maintain a network of more than five thousand miles of track within the boundaries of the District serving over four thousand private industries. The Manufacturers Association of Chicago Heights urges that the boundaries of the District be extended to include Chicago Heights, a point shown by the record to be approximately 3.7 miles beyond the southern boundary of the District, now generally taking the Chicago District rates. The Chicago and Eastern Illinois Railway Company, which serves Chicago Heights, also contends for the inclusion of this industrial center within the switching limits. This feature will be hereinafter further discussed.

HISTORY OF CHICAGO SWITCHING DISTRICT RATES: Prior to August 1, 1911, the rates, charges and practices of the carriers covering the switching service within the District were in an unsatisfactory, and what has been described as, a chaotic condition. Each carrier within the District published its individual switching rate. No joint rates were in effect. During 1910 a Joint Committee was organized composed of shippers and carriers, with the object of establishing some uniformity in local switching rates. After many conferences, various differences were harmonized, and an agreement was entered into which has since been known as the "Lowrey Agreement", which was translated into an "All Commodity" tariff, effective August 1, 1911,

establishing uniform, individual and joint rates on all commodities except coal, coke and grain. The record shows that the exception on coal and coke was removed in June, 1927, on Illinois intrastate traffic, and in July, 1927, on interstate traffic. The rates in effect prior to the Lowrey Agreement supplied the measure by which the new rates

were determined. The all-commodity rates published under the Lowrey Agreement were 1½ cents for one- and two-line hauls, and not to exceed ½ cent for each additional line haul, minimum 60,000 pounds. Due to the general increases and reductions in rates since 1911, the present all-commodity rates are 2½ cents for one- and two-line hauls, and 3 cents for three-line hauls, as compared with the proposed rates of 3, 3½ and 4 cents, respectively, minimum 60,000 pounds.

The record shows that the carriers generally concede that exceptions should be made to the proposed all-commodity basis of rates, carloads, on such commodities as slag, cinders, quarry strippings, et cetera, which are without commercial value, the accumulation of which at industries is generally regarded as a nuisance and impedes the operation of the plant and can only be disposed of by removal through cooperation of the carriers.

In addition to the foregoing, the Chicago & Illinois Western Railroad desires to make an exception of tar products, due, as alleged, to the imminent loss of the traffic if any increase is made in the present rates.

Docket 17513: At the hearing on September 20, 1928, a motion was made by the complainant in this proceeding to dismiss, without prejudice, insofar as the complaint attacks, rates on crushed slag different from those on crushed stone and gravel within the District. The complainant explained that the primary purpose for filing the complaint was to seek different rates on crushed slag from those on crushed stone and gravel, and this issue having

since been adjudicated, asks that the complaint be dismissed.

The complainant further stated:

> "The position of the Illinois Slag & Ballast Company is identical with the position of the crushed stone operators within the Chicago District."

No further testimony was offered with respect to the issues in Docket 17513 and the complainant's motion to dismiss should be granted.

COST STUDY

Originally, as appears from the foregoing, the carriers endeavored to realign the rates on iron and steel articles only. The Interstate Commerce Commission thereupon, in its notice of October 25, 1926, requested that the carriers prepare and submit statistics relating to the shortest, longest and average hauls on iron and steel articles within the District, to be accompanied by detailed cost data. The request was later changed to include all commodities embraced in the 69 classes provided for in the carriers' annual report to the Commission. Pursuant thereto certain statistics were compiled on 42,666 cars moved in September, 1926, while the cost study was prepared for only 26,166 cars.

Fifteen of the carriers operating within and adjacent to the District and between the District and Chicago Heights, Illinois, collaborated in a joint cost study of the switching movements originating and terminating within its boundaries.

This study was introduced upon request of the Interstate Commerce Commission without restrictions as to the specific carriers to be included. The study was based upon the Coverston-Saur formula, briefly described hereinafter, and embraced seven trunk lines, three large switching and terminal roads (belt lines), and five smaller switching and terminal roads (so-called industrial roads), hereinafter collectively called the study roads, as follows:

Trunk Lines

Chicago, Burlington & Quincy Railroad
Chicago & North Western Railway
Chicago, Milwaukee, St. Paul & Pacific Railroad
Chicago, Rock Island & Pacific Railway
Elgin, Joliet & Eastern Railway
Illinois Central Railroad
Pennsylvania Railroad

Large Switching & Terminal Companies	*Small (industrial) Switching & Terminal Companies*
Baltimore & Ohio Chicago Terminal Railroad	Chicago & Illinois Western Railroad
Belt Railway of Chicago	Chicago Short Line Railway
Indiana Harbor Belt Railroad	Chicago, West Pullman & Southern Railroad
	Pullman Railroad
	Illinois Northern Railway

The study covers carload movements only and segregates the expenses incurred thereon into three general classes, namely, clerical, switching and car detention or maintenance. Taxes and returns on investments are provided for by the use of an estimated ratio, referred to as an operating ratio and used as a divisor to expand the determined costs so as to embrace those elements.

Clerical. This expense represents the cost incurred to prepare records at the point of origin and the point of destination. It embraces the direct expense as well as an apportioned amount of superintendence, maintenance, and general expenses. The total clerical cost at each terminal is reduced to a unit cost per consignment which is assigned to each car moving in or out of the respective terminal.

Switching. This expense represents the cost of all services required in the physical movement of a car, inclusive of an apportioned amount of superintendence, maintenance, traffic and general expenses. The total switching expense, is reduced to an engine-hour basis and ultimately to the cost per unit of production, the denominator being the number of cars handled in an hour by an engine while performing a distinctive part of the whole movement. These distinc-

tive parts make up the switching service as a whole and are designated "elements of service." These elements represent switching work such as classification, transfer, interchange and industrial and team track switching. The elements of service embraced in a given route between a shipper and a consignee are combined under an "index number" so as to show the total switching cost for each car. The respective index cost is then assigned to each car moving over the same route.

Car Detention. This expense embraces the maintenance of freight train cars inclusive of an apportioned amount of superintendence, maintenance and general expenses. The total car detention expense is reduced to the cost per serviceable car day, which is applied to each car for every day that it is in switching service.

Operating Ratio. After having obtained the total operating expense for the traffic under review, provision must be made for taxes and a fair return upon the property used in performing the service. It is suggested that this be accomplished by means of an operating ratio, which is to say that the total costs as determined represents, for example, 67% of the rate or revenue, which should be collected for performing such service. This would allow the difference, or in this illustration, 33% for taxes and profit or return on the investment.

The formula introduced by the carriers used an operating ratio of 66.67%.

The carriers claim that an operating ratio of 67.4% (correct figure should be 69.2 as will be explained later) was necessary for the railroads of the country as a whole to earn 5.75% upon their investment during the year 1926. However, the carriers herein contend for a ratio lower than 66.67%, whereas the shippers contend for a higher ratio.

The test periods within which the unit costs were determined were confined to one week on each of the 15 roads during June, August and October, 1927. The unit costs so

determined were then applied to the 26,166 cars previously mentioned which were embraced in the traffic analysis as of September, 1926, and hereinafter referred to as "study cars." The foregoing also applies to 638 additional study cars which moved between Chicago Heights and the District during September, 1926.

The following tables, prepared from the carriers' exhibits, show the total traffic inclusive of study and nonstudy cars.

Study and Nonstudy Cars
Chicago Switching District

	Interstate		Intrastate				Total	
			Illinois		Indiana			
	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent
One-line Haul—								
Study	7,573	17.75	1,951	4.57	2,426	5.69	11,950	28.01
Nonstudy	595	1.39	7,017	16.45	134	.31	7,746	18.15
Total	8,168	19.14	8,968	21.02	2,560	6.00	19,696	46.16

	Interstate		Intrastate				Total	
			Illinois		Indiana			
	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent
Two-line Haul—								
Study	5,472	12.82	5,853	13.72	158	.37	11,483	26.91
Nonstudy	1,958	4.59	4,257	9.98	11	.03	6,226	14.60
Total	7,430	17.41	10,110	23.70	169	.40	17,709	41.51
Three-line Haul—								
Study	803	1.89	1,930	4.52	.....	....	2,733	6.41
Nonstudy	793	1.85	1,735	4.07	.....	....	2,528	5.92
Total	1,596	3.74	3,665	8.59	.....	....	5,261	12.33
Total (Study)	13,848	32.45	9,734	22.82	2,584	6.06	26,166[1]	61.33
Total (Nonstudy)...	3,346	7.84	13,009	30.49	145	.34	16,500[2]	38.67
Grand Total...	17,194	40.29	22,743	53.31	2,729	6.40	42,666	100.00

1—15 Study roads.
2—20 Nonstudy roads.

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Between Chicago Switching District and Chicago Heights

	Interstate		Intrastate				Total	
			Illinois		Indiana			
	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent
Two-line Haul—								
Study	38	2.94	354	27.41	.....	.....	392	30.35
Nonstudy	56	4.33	338	26.16	.....	....	394	30.49
Total	94	7.27	692	53.57	.....	....	786	60.84
Three-line Haul—								
Study	135	10.44	87	6.74	.....	....	222	17.18
Nonstudy	79	6.12	156	12.07	.....	....	235	18.19
Total	214	16.56	243	18.81	.....	....	457	35.37
Four-line Haul—								
Study	6	.46	18	1.39	.....	....	24	1.85
Nonstudy	.....	.....	25	1.94	.....	....	25	.94
Total	6	.46	43	3.33	.....	....	49	3.79
Total (Study)	179	13.84	459	35.54	.....	....	638	49.38
Total (Nonstudy)..	135	10.45	519	40.17	.....	....	654	50.62
Grand Total ..	314	24.29	978	75.71	.....	....	1,292	100.00

The average costs, hauls and loading as compiled by the carriers, based upon the study cars and shown in their exhibits are as follows:

Switching Costs Between Points in the Chicago Switching District

	Cars	Average Haul Per Car	Average Loading Per Car	Average Operating Cost		Average Total Cost Based on Operating Ratio 66.67%	
				Per Car	Per 100 lbs.	Per Car	Per 100 lbs.
		(Miles)	(Pounds)		(Cents)		(Cents)
One-line.....	11,950	13.12	86,250	$15.94	1.8	$23.92	2.8
Two-line	11,483	21.32	84,145	18.92	2.2	28.39	3.4
Three-line...	2,733	26.53	85,405	21.52	2.5	32.29	3.8

[1] *Switching Costs Between Points in the Chicago and the Chicago Heights Districts*

	Cars	Average Haul Per Car	Average Loading Per Car	Average Operating Cost		Average Total Cost Based on Operating Ratio 66.67%	
				Per Car	Per 100 lbs.	Per Car	Per 100 lbs.
		(Miles)	(Pounds)		(Cents)		(Cents)
Two-line	392	31.66	75,171	$18.77	2.5	$28.15	3.8
Three-line...	222	33.42	74,416	21.62	2.9	32.42	4.4
Four-line....	24	41.94	84,994	21.57	2.5	32.35	3.8

1—No one-line hauls involved.

After the cost study was submitted into the record the shippers raised many objections to the accuracy of the methods and figures used by the carriers. The carriers also at a later date made additional claims of costs.

The important criticisms of the carriers relate to the following which would tend to increase the determined costs:

1. The studies were made during the summer and fall periods without allowance being made for some of the increased costs incurred during the winter months. This is based upon an alleged check indicating that less cars were handled and more fuel consumed during the months of December, January and February than in any of the other nine months of the respective years 1925, 1926 and 1927.

2. The cost figures reflect the level of wages in 1927. Later increases granted and pending have not been included.

3. No allowance was included by the trunk-line study roads for the transportation of locomotive fuel over the respective road's own lines or by the three large belt lines for distributing coal to their respective fuel stations.

4. No part of the maintenance expense of main tracks to cover their use in the switching service was included in the switching costs.

5. Costs borne by the intermediate and the terminating roads for the return of some empty cars were omitted.

On the other hand the shippers point to other infirmities, both as to the theory and the application of the carriers' formula, of which the following are considered the most important and would tend to lower the costs:

1. On the basis of the serviceable car-day detention, a portion of the maintenance expenses of freight-train cars, or so-called car detention, was allocated to the cost of switching. The shippers' primary objection to this is that the use of the serviceable car-day as a proper basis for this apportionment is erroneous because it comprehends

only a time factor, no consideration being given to wear and tear from use as measured by mileage. This criticism is on the grounds that repairs, the most important item of

maintenance, result principally from damage done when a car is in motion and not while standing still. It is contended that this basis overstates the cost for intra-district traffic and understates the cost for road haul traffic. In this connection the shippers also point out that the responsibility for empty movements as between road and switching services has not been carefully observed, resulting in both over and understatements in the costs, and that it is erroneous to include private cars in the computation of the unit cost per car-day for maintenance, inasmuch as the carriers perform only running repairs on private cars except in case of accident.

2. Failure to determine distinct engine-hour costs for switching and weighing cars at industries because of the use of lighter engines in those services attended by lower engine-hour costs and because in most instances that service is performed on tracks owned and maintained by the industries.

3. The determination of unit costs based upon movements during a test period of one week in 1927 on each respective carrier and the application of those unit costs to traffic materially different in volume in another period or during September, 1926, results in an overstatement. The test period should be of longer duration so as to more accurately reflect the normal movement of traffic and the costs so determined should be applied to the traffic moving during the test period instead of another period in which the traffic may not be similar.

4. Failure to reduce the cost by demurrage and weighing charges collected results in an overstatement of the cost as a basis for a distinct transportation rate where as here the expenses attached to those services are included in the cost.

5. Throughout the entire proceeding the shippers persistently contended for the inclusion of the Chicago Junction Railroad in the cost study, on the grounds that this road handled a large volume of business, most of which was short haul traffic, and that the omission of such a carrier would unduly increase the cost as indicated by the study roads. The shippers also object to the inclusion of the Elgin, Joliet and Eastern with special reference to the large volume of business included in the study which moves partly outside of the District. For these reasons the shippers contend that the cost study is not representative of the intradistrict traffic as a whole.

6. The operating ratio of 66.67%, mentioned by the formula, is stated to be much too low.

7. Subordination of switch movements to passenger and road freight trains has inflated the cost of intradistrict traffic.

8. Many transfer costs include costs of setting out and picking up cars at the beginning or end of the transfer run. Combinations of these transfer costs have then been applied on long transfers resulting in overstatement of costs.

9. General criticism was made of the carriers' operating methods and the surrounding conditions as affecting the costs. These relate to circuity of movements, operating methods and restrictions at interchange points, lack of trackage rights to facilitate hauls, and failure to perform joint switching in some instances where two or more carriers serve the same plant.

Representatives of the Illinois Commerce Commission submitted testimony indicating that the costs as compiled by the carriers are overstated due to the inclusion of time prior to the actual assignment of cars to the particular

switching movements and also subsequent to their release and the lapse of sufficient time to return cars to a carrier's yard. They also agree with the shippers' contention that the costs should have been reduced by the amount of demurrage collected.

Other less important criticisms were made, but it is not deemed necessary to discuss them in detail.

The following table summarizes and compares the results of the cost study revised to the basis of the respective claims of the carriers and shippers:

	11,950 Cars One-line		11,483 Cars Two-line		2,733 Cars Three-line	
	Carriers	Shippers	Carriers	Shippers	Carriers	Shippers
Operating Exp. (Study)	$190,552	$190,552	$217,317	$217,317	$58,829	$58,829
Net Agreed Undercharge	4,031	4,031	2,468	2,468	414	414
	$194,583	$194,583	$219,785	$219,785	$59,243	$59,243
Disputed Adjustments						
Net Undercharge	4,500	.....	9,787	.....	7,679	.....
Net Overcharge	.....	35,684	.....	35,510	.....	7,826
Revised Operating Expense	$199,083	$158,899	$229,572	$184,275	$66,922	$51.417
Operating Expenses per 100 lbs.	1.93c	1.54c	2.38c	1.91c	2.87c	2.20c

In the following table we have compared the carriers' original claim of costs (exhibit 7-A) with the present and proposed revenues of the same cars for which costs have been determined.

	Present				Proposed				
	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Costs Expanded by 66.67%
	Cents	Cents	Cents	Per cent	Cents	Cents	Cents	Per cent	Cents
Costs Based on Carriers' Orig. Claims									
One Line	2.5	2.59	1.85	71.43	3.0	3.00	1.85	61.67	2.77
Two Line	2.5	2.68	2.25	83.96	3.5	3.69	2.25	60.98	3.37
Three Line ...	3.0	3.58	2.52	70.39	4.0	4.33	2.52	58.20	3.78
Average (weighted)...				76.60				60.82	

Little need be said regarding the foregoing figures except to point out that the carriers have at a later date made many claims of additional cost. After making adjustment for such claims as could be converted into definite amounts the carriers' claims become as shown in the following statement:

	Present				Proposed				
	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Costs Expanded by 66.67%
	Cents	Cents	Cents	Per cent	Cents	Cents	Cents	Per cent	Cents
Costs Based on Carriers Original Claims									
One Line	2.5	2.59	1.93	74.52	3.0	3.00	1.93	64.33	2.89
Two Line	2.5	2.68	2.38	88.81	3.5	3.69	2.38	64.50	3.57
Three Line ...	3.0	3.58	2.87	80.17	4.0	4.33	2.87	66.28	4.30
Average (Weighted)...				81.34				64.58	

On the other hand the shippers have presented much evidence of claimed overstatements of cost. The net result of such adjustments claimed by the shippers as could be stated in definite amounts are as follows:

	Present				Proposed				
	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Costs Expanded by 76.80%
	Cents	Cents	Cents	Per cent	Cents	Cents	Cents	Per cent	Cents
Costs Based on Shippers' Claims									
One Line	2.5	2.59	1.54	59.46	3.0	3.00	1.54	51.33	2.01
Two Line	2.5	2.68	1.91	71.27	3.5	3.69	1.91	51.76	2.49
Three Line ...	3.0	3.58	2.20	61.45	4.0	4.33	2.20	50.81	2.86
Average (Weighted)...				64.77				51.42	

A study of the foregoing summaries denotes that there is a wide difference between the costs as claimed by the two contending parties. According to the claims made by the carriers the present rates are much too low and the rates proposed are not much in excess of the proper rates. On the other hand based on the claims of the shippers even the present rates are excessive.

The above differences in results are attributable, in the main, to the disagreement between shippers and carriers as to the theory and the application of the carriers' cost formula relative to the allocation of the maintenance of cars (car detention); the inflation of averages for the study period of September, 1926, by the carriers' application of higher element-of-service costs developed on specific movements of relatively low volume during the test period, lim-

ited to one week in 1927, to the same elements of service performed on similar movements of greater volume during September, 1926, without a compensating movement of higher volume in the latter period at the lower test period costs developed on other elements of service; the carriers' failure to develop distinct costs for industrial switching, weighing, etc., because of lighter engines employed with less expense than in other switching service; and the variation between the operating ratio of 76.8 per cent proposed by the shippers and the operating ratio of 66.67 per cent suggested by the formula and considered as maximum by the carriers.

AGREED ADJUSTMENTS OF COST DATA

Winter Operations

The principal adjustment on which the carriers and the shippers have agreed is the effect of winter operations. The cost studies were prepared in the summer and fall and it is claimed that costs would be increased in the winter months. The amount of this adjustment was agreed upon by the carriers and shippers and appears reasonable. In our opinion the cost data (Exhibit 7-A) should be adjusted by these amounts (Exhibit 83, p. 4).

Miscellaneous Minor Items

There were a number of minor adjustments claimed by the shippers which were the subject of certain conferences with the result that definite amounts were agreed upon. We have carefully examined the record as to these items and believe them to be reasonably correct. (Exhibit 83, pp. 1-3.)

DISAGREEMENTS

Disparity Between Study and Other Roads

One of the most important criticisms of the shippers is directed toward the question as to whether the cost study, as conducted on the fifteen participating railroads, is representative of the transportation situation throughout the District. The criticism principally refers to the inclusion of the Elgin, Joliet & Eastern Railway Company, hereinafter referred to as the "E. J. & E.," and the exclusion of the Chicago Junction Railroad.

The E. J. & E. traffic, which is included in the cost study, is composed largely of traffic whose movements are partly inside of the District and partly outside of the District. The record shows that the E. J. & E. is not a party to the Lowrey Tariff and that many of its rates are on a higher basis.

The Chicago Junction Railroad is one of the largest switching roads in the District and handles a large volume of short hauls. Many of its rates are below the Lowrey basis. This road operates in the densely built up Stock Yards District and surrounding neighborhood.

Since the present case involves the fixing of rates only within the District and between the District and Chicago Heights, Illinois, it is difficult to understand why the carriers should have included, in determining the costs, a great volume of traffic moving between the District and other points outside of the District, such as Gary, Indiana. It is not proposed that the District be extended to include Gary, Indiana, and neither is there any evidence that any such movements are similar to movements within the District. The record shows that of the 11,950 one-line haul cars in

the study, 7,093 cars were E. J. & E. movements, of which 6,854 involved movements outside of the District. *Thus over 57% of the one-line haul cars used as a basis of determining intradistrict switching costs actually moved outside*

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of the District. Of the total of 11,483 two-line haul study cars, 1,264 involved movements on the E J. & E.; of the 2,733 three-line haul study cars, 730 involved movements on the E. J. & E. The record does not disclose how many of the two- and three-line E. J. & E. movements are outside of the District.

A comparison of the carriers' original cost study, Exhibit 7, which covers the fifteen study railroads, with the carriers' original statistical Exhibit 11, which covers the entire traffic on all railroads in the District, shows that the classes of traffic included in the cost study are not, in many cases, similar to the classes of traffic excluded from the study. As the Chicago Junction Railroad operates extensively in the Stock Yards District, it is reasonable to presume that the exclusion of the Chicago Junction Railroad from the cost study is largely responsible for the dissimilarity between the group of study cars and the remainder of the traffic: illustrations of this point are, one-line haul, fresh meats, no cars in study, 130 cars in other traffic; other packing house products, 10 cars in study, 1294 cars in other traffic; agricultural implements, no cars in study, 94 cars in other traffic.

Since the original cost study Exhibit 7 did not show the revenues collected on the traffic covered by the cost study, the only comparison of costs and revenues possible, based upon the original showing of the carriers, was a comparison of the cost of the study cars with the revenues of all of the traffic. A study of the makeup of the cost study

traffic, as compared with the total traffic, indicated many important differences, of which the above reference to fresh meats, packing house products and agricultural implements is an illustration. This matter was called to the carriers' attention with the result that they revised both Exhibit 7 and Exhibit 11, by preparing and introducing into the record Exhibit 7-A and Exhibit 11-A. The revised cost study Exhibit 7-A not only showed the cost of

handling the traffic studied, but also the present and proposed revenues pertaining to that particular traffic.

The carriers' revised statistical Exhibit 11-A sets forth the statistics pertaining to the cost study cars separately from the statistics pertaining to the cars not included in the study. The following summary of important characteristics of the study cars, as compared with the cars not studied, was obtained from Exhibits 7-A and 11-A.

COMPARISON OF PRESENT AND PROPOSED REVENUES PER HUNDRED POUNDS AND AVERAGE DISTANCE HAULED

	Present Rev. per Cwt.		Proposed Rev. per Cwt		Average Car Haul—Miles	
	Study Cars	Other Cars	Study Cars	Other Cars	Study Cars	Other Cars
	Cents	Cents	Cents	Cents		
One Line	2.6	1.3	3.0	1.7	13.12	6.49
Two Line	2.7	2.5	3.7	3.5	21.32	20.76
Three Line	3.6	3.4	4.3	4.1	26.53	25.45

This tabulation shows that in the case of one-line hauls the cars, which were studied for the purpose of determining costs, had an average haul of over 13 miles, which was more than twice the average haul of the cars not studied. A similar situation exists in the present revenues per hundred pounds, in that the carriers received 2.6 cents per

hundred pounds on the cost study traffic and exactly half that amount on the other traffic. The rates proposed by the carriers would result in an average revenue of 3¢ per hundred pounds on the cost study cars and only 1.7¢ on the other cars. In this connection it is interesting to note that the carriers' revised claim of cost for study cars indicates a cost of 1.93¢ per hundred pounds for one-line hauls, which greatly exceeds the revenues which they, themselves, proposed to collect on the traffic which was not included in the cost study.

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The average car haul and the present and proposed revenues of the two- and three-line hauls are slightly lower for the other cars than for the study cars, but the difference is not nearly as marked as in the case of single-line hauls.

Because of the great difference in the three known characteristics (average haul, present revenues and proposed revenues) of the other cars, as compared with the study cars, it does not appear reasonable that the costs as developed on the study cars should be assumed to represent the cost of handling the other cars.

It therefore would be wrong to compare the costs as developed on the study cars with the revenues of all the traffic. If any comparison is to be made, the only proper one would be to compare the costs as ascertained on the study cars with the revenues earned on the same traffic.

Since the record shows that a large percentage of the E. J. & E. traffic included in the cost study moves across the boundary of the District, either coming into or going out of the District, it would be very desirable to be able to segregate that traffic from the cost study. However, the record does not contain any information enabling us to make that segregation.

The record shows that the tracks of the E. J. & E., which would carry the traffic included in the cost study, lie principally in the State of Indiana, and to a small extent within the State of Illinois. The record also indicates that there are many rates on the E. J. & E. which are in excess of the Lowrey Rate basis. Should this information be used as a basis for a presumption that all interstate and intrastate Indiana movements on rates over both the present and the proposed Lowrey basis constitute traffic over E. J. & E., we would be assigning to the E. J. & E. 428 one-line haul cars, although the record definitely shows that

there are 7093 E. J. & E. cars in the study. On the two-line hauls, this process would assign to the E. J. & E. 1496 cars, although the record shows that there were only 1264 E. J. & E. cars in the study. On the three-line hauls, this process would assign to the E. J. & E. 1201 cars, although the record indicates that only 730 E. J. & E. cars are included in the study. This method, although at first appearing to have some merit, is thus proven to be incorrect, and if used for the purpose of eliminating the effect of the E. J. & E. would result in arbitrary reductions in the indicated revenues of the traffic under review. The record further shows that there are rates in the District which are in excess of the Lowrey basis other than those existing on the E. J. & E. The record also shows that many of the cars moving over the E. J. & E. moved on rates while at present are above the Lowrey basis would not exceed the proposed Lowrey basis, and thus would not be included in the aforementioned adjustment.

Based upon the present record, it is impossible to exclude the traffic of the E. J. & E.

Car Detention

In the compilation of cost of handling District traffic, the carriers have allocated the cost of maintaining freight cars (which includes car repairs, depreciation and retirements, together with certain overhead costs) solely on the basis of time.

They first determined (Exhibit 3) the average cost of maintaining one freight car for one day which amounted to $0.64352. This was based upon the experience of nine railroads whose operations practically cover the entire United States. This unit cost was then applied to the cars moving in the District on the basis of the number of days each car was assigned to a particular movement.

A great deal of criticism was directed against this method of allocating the cost of maintaining freight cars to the switching service in the District. This criticism was based largely upon the contention that the maintenance of freight cars was related much more closely to the amount of use made of the cars, or the miles traveled, rather than the element of time. For instance, it was stated that freight cars used in comparatively short hauls within the District were in motion only a small part of the total time required to handle the shipments. During most of the time the cars were actually standing still at the shipper's or consignee's places of business or in the railroad yards. On the other hand, cars used in long distance road haul traffic would be in motion a larger percentage of the total elapsed time.

The shippers have introduced an illustration which they claim is a very conservative calculation dealing with a car in a single-line movement in the District as follows: The record shows that the average loaded haul of single-line

cars moving in this study was approximately 12 miles. The shippers have added to this an allowance of an equal distance for the empty haul and another equal amount to provide for the shunting of the cars backwards and forwards in classification and other service, making a total distance traveled of 36 miles, claimed to be a conservatively high figure.

The shippers' Exhibit 13 contains a computation showing that the average number of car days assigned to single-line cars was 6.6 car days. (A correction of this figure, based upon the carriers' corrected Exhibit 7-A, would make it 6.2 car days, which, however, will have little effect upon the present computation.) Based upon a total haul of 36 miles per car and the average number of days in service of 6.6 days, the shippers have computed that the cars in switching service move only 5.5 miles per day as

compared with almost 30 miles per day for all operations, (or *more* than 30 miles per day if terminal movements are included). The shippers have carried this comparison still further on the basis of the normal average distance of 6 miles covered in one hour by switching locomotives indicating that if the car was in motion throughout the entire day it would have moved 144 miles. These figures indicate that since the cars traveled only 5.5 miles per day they were actually in motion only about 4% of the time and were standing still about 96% of the time.

Besides the objection to the sole use of the element of time in apportioning car repairs, serious objection was raised to the amount of time which was charged against the cars in the cost study. The shippers have pointed out that many of the cars in their opinion have unreasonably long detention (Exhibit 13, p. 45, Exhibit 83, p. 118) and

that costs have been assigned to many cars in the study which should be charged to prior or subsequent loads.

Accountants for this Commission have also made extensive studies of the time charged to cars in the cost study. This investigation was completed for 1018 cars and partially completed for 189 cars. This work represented a check of approximately 2200 car terminals. It was found that of the 1018 cars checked completely, 816 cars were in error. The reduction in the amount of time chargeable to these 1018 cars amounted to over 26%. The reduction made on the 189 cars checked by only *one* terminal amounted to over 16%. Exhibit 96, prepared and introduced by our accountants, contains the following summary:

SUMMARY OF TERMINAL DETENTION ON CARS CHECKED

	Cars Checked both for beginning and ending detention				Cars Checked either for beginning or ending detention			
	1 Line Hauls	2 Line Hauls	3 Line Hauls	Total	1 Line Hauls	2 Line Hauls	3 Line Hauls	Total
Total number of cars checked	276	645	97	1018	.....	172	17	189
Number of cars corrected	223	516	77	816	.....	103	13	116
Number of cars Unchanged	53	129	20	202	.....	69	4	73
	(Hrs.)	(Hrs.)	(Hrs.)	(Hrs.)		(Hrs.)	(Hrs.)	(Hrs.)
Cost Study Terminal Detention	71596	196575	29069	297240	.....	52050	4779	56829
Corrected Terminal Detention	54293	142432	21365	218090	.....	43670	3834	47504
Deductions from Cost Study Detention: 1-Idle Time	10444	22249	4329	37022	.....	7171	882	8053
2—Unusual Delay of Loaded Cars	288	3054	240	3582	.....	144	.....	144
3—Reconsigned (Or Reshipped) Cars	533	753	.....	1286	.....	200	.....	200
4—Private Line Cars	2142	6451	30	8623	.....	.....	.....	.....
5—Return of Empty Cars from Base Yard to Interchange Point	3158	3269	295	6722	.....	92	15	107
6—Cars on Repair Tracks	696	755	72	1523	.....	312	.....	312
7—Miscellaneous Adjustments (clerical errors, etc.)	42	17612	2738	20392	.....	461	48	509
Total Deductions	17303	54143	7704	79150	.....	8380	945	9325

The foregoing table indicates that errors were found in very substantial amounts, being 24% in one-line hauls and 27% in both two-and three-line hauls. The record indicates that Exhibit 96 was carefully prepared after months of painstaking and careful investigation. It is further shown that our accountants reviewed with the Chicago and North

Western Railway Company each and every one of the 269 car terminals checked on that road, with the result that practically no change was made in the figures of the Commission's accountants. This is very significant in view of the fact that the corrections on the Chicago and North Western represent 27.6% of the total correction in time for all cars checked, although the volume of traffic checked on that road represents only 12% of the total checked, measured by car terminals.

The carriers have not contested the accuracy of Exhibit 96. The only rebuttal evidence offered by the carriers was a one page exhibit, No. 98, with the intent of showing that the cars checked by our accountants were not representative of the whole study but included a larger percentage of long detention cars than of cars having short detention.

This Exhibit 98 appears to have lost most of its import because Exhibit 96 states on its face (Comments, p. III) that it lays no claim to being representative of the entire group of cars in the study. Nevertheless, Exhibit 96 is conclusive to the effect that many serious errors exist in the amount of time charged against the traffic under review.

Exhibit 96 shows that almost 50 per cent of the errors in time which the carriers have charged against this intra-district switching is due to the conclusion of idle time of cars when they were not in fact assigned to the particular movement to which the time was charged (Exhibit 96). A great number of empty cars were placed on industry tracks without having been ordered by the industry. Such cars frequently remained on the carriers' tracks for many days

before they were actually ordered and brought up to the loading platforms. Important cases of this kind were found at the International Harvester Company, Deering Works on the Chicago and North Western, J. T. Ryerson Com-

pany on the Pennsylvania, and Brownell Improvement Company on the Baltimore and Ohio Chicago Terminal Railroad. Other important errors in the inclusion of excess time was found in the case of private line cars where the carriers had included time for such cars while they were standing on the tracks of the owner company, during which time the carriers had no responsibility whatever for the said cars. In addition, a great number of clerical errors were discovered which resulted in a very material correction.

The record (Exhibit 84, p. 188) clearly denotes that an error of considerable magnitude was made in assigning car detention on certain coke movements on the E. J. & E. The method used by this carrier resulted in charging against the 3,955 cars included in the study the entire available time for the 30 days of the month of September of all of the 922 coke cars that were found to have carried coke during the month. The carrier made no allowance for the time these cars were used to handle 4,990 coke movements within the Gary plant of the Illinois Steel Company. No allowance was made for time of car while unserviceable in repair shops or awaiting repairs. This method improperly charges all idle time of said equipment against the traffic included in the study. A calculation presented by the accountants of this Commission indicates that the carriers' claim of 7.06 days required for each of these coke movements should be reduced to approximately 3.16 days.

After the carriers had determined the number of days detention chargeable to each car in the study they applied thereto the average car detention cost per day of $0.64352.

This cost was based upon an average for nine trunk line railroads whose operations practically cover the entire United States. It includes the costs of all repairs to the

carriers' own equipment, except such damage as was caused by other railroads. It also includes the cost of repairs of damage to equipment of others for which these roads were responsible. The serviceable car days used by the carriers as the divisor include the serviceable days of all equipment on each of these roads regardless of ownership.

The record shows that the belt lines and industrial railroads own only a few freight cars and do very little repair work to freight cars not owned by them. As a result the car repairs costs of such railroads are extremely low as compared with car repairs on trunk line railroads.

These facts form the basis for certain objections on the part of the shippers to the use of the average car detention cost of $0.64352 per day.

The first objection is that this average cost is erroneous because it includes cost of making certain repairs incurred while the cars were in use by the belt and industrial railroads, while the number of serviceable car days used as divisor does not include the time that said cars spent on the lines of the belt and industrial railroads.

The second objection is that the carriers then have applied the average unit cost of $0.64352 to all movements on the belt and industrial railroads.

The third objection is that the unit cost has been applied to private line cars. (This is partly offset by the fact that the serviceable car days of such private line cars as were on the lines of the trunk line railroads on the dates the cars were counted have been included in the carriers' number of serviceable car days used as a divisor in determining the unit costs.)

These objections appear to be of considerable importance in a case such as the present involving only intra-

district switching and covering a territory in which a great number of belt and industrial railroads operate and where it is shown that eight (8) out of the fifteen (15) study railroads were belt or industrial lines.

Pursuing their general contention that time alone is not the proper basis for apportioning car repairs, the shippers have presented certain compilations as to the expense of maintenance of cars applicable to the District traffic on a basis which gives effect to both the element of use or miles traveled as well as the element of time. They have adopted in general a formula which was contained in the American Railway Engineering Association Bulletin for March, 1923, dealing with the question of apportionment of this class of expense. This formula was prepared by a committee of engineers of the American Railway Association.

The following is a brief summary of the shippers' computation of the costs applicable to one-line hauls. They first separated the average cost of maintaining one freight car for one day as determined by carriers in their Exhibit 3, amounting to 64.352 cents as between the two items of (a) repairs and (b) depreciation and retirements. The overhead accounts were prorated to these two groups. The results were as follows:

Repairs	49.59 cents
Depreciation and retirements	14.76 cents
Total	64.35 cents

It was considered that 65% (Formula basis) of the item of repairs, amounting to 49.59 cents per car day, was attributable to use while the remainder of this item and the entire cost of "Depreciation and Retirement" was attributable to time. This resulted in 32.23 cents being allocated to use and 32.12 cents allocated to time. The shippers then di-

vided the 32.23 cents per car day attributable to use by 30, which is the general average miles per car day during the year 1926, resulting in a cost of 1.1 cent per car-mile. From these basic figures, the shippers then computed the cost of car maintenance allocable to District traffic as follows:

The record shows that the average loaded haul of all single line cars in intradistrict traffic was 12 miles. In order to make adequate allowance for empty hauls and and movements in classification and other services the shippers have adopted an average distance haul of 20 miles per car to which they have applied a cost of 1.1 cents per mile, resulting in a cost of 22 cents per car for the element of use. In dealing with the element of time they have used the average detention of 6.6 days per car and applied thereto the cost of 32.12 cents per car day, as determined above, making a total cost applicable to the element of time of $2.11 per car. To the sum of these two items the shippers have added 15 cents per car in single-line traffic to cover any additional damage resulting from use on account of loading or unloading or general handling within the District. This has resulted in a total cost per car handled in single-line District traffic of $2.48, which compares with the cost of $3.95 per car claimed by the carriers.

The shippers applied the same formula to two- and three-line hauls, using the average days detention as computed fram carriers' Exhibit 7 and using for two-line hauls an average haul of 40 miles and Terminal damage of 30 cents, and for three-line hauls an average haul of 50 miles and Terminal damage of 45 cents. In this manner the shippers arrived at an average cost per car for car maintenance of $3.16 for two-line hauls and $3.78 for three-line hauls as compared with the carriers' cost of $4.88 for two-line hauls and $5.66 for three-line hauls. The amount of overcharge claimed by the shippers on this item of car detention is

$21,167 for one-line hauls and $19,536 for two-line hauls and $5,005 for three-line hauls.

A careful study of the methods used by the shippers indicates that they did not follow the American Railway Engineering Association formula in all respects and also that they made certain estimates which are not entirely supported in the record.

The record does not contain the facts and figures necessary to make a correct adjustment of either the carriers or the shippers claim of car detention costs.

SEPARATE ENGINE HOUR COSTS—WEIGHING AND INDUSTRIAL SERVICE.

Criticism has been directed at the cost study in respect to the engine-hour figures used by the carriers in determining the costs of weighing and industry switching. The carriers developed engine-hour costs which were applied to all elements of service. Consideration was given by some of the carriers to differences in the characteristics of certain lines, districts or operating divisions and separate engine-hour costs were developed for those locations; in applying such costs indiscriminately to various elements of switching service, it was claimed that the carriers burdened the weighing and industry services with costs that should have been distributed elsewhere.

The carriers do a considerable amount of industry switching on property owned by the industries. Most of the large industries and many of the smaller industries own and maintain the industry tracks located on their properties. In connection with switching work performed by the carriers on the tracks of such industries it is manifestly improper to charge up the expense of maintenance of way and struc-

tures and the related general expenses. It is also unfair to add to such expenses a percentage for return on investment.

Nevertheless, the method followed by the carriers in applying the same average engine-hour against all elements of service does have the effect of assigning improper items of expense and investment against industry switching and weighing in all cases where the industries own and maintain the tracks on their own properties. It has been shown that maintenance of way and structures comprises about 14.7% of the switching costs. It would not be proper, however, to conclude that the industry and weighing costs, incurred by the carriers on the premises of industries owning and maintaining their own tracks, should be reduced by the latter percentage for the reason that, if the carriers were to set up separate engine-hour costs for each class of switching service, expenses eliminated on one class of service would be assessed against another class of service and in the application of such elements of costs to the intradistrict traffic the reduction of industrial costs would be partly offset by an increase in other costs.

It has been shown by the shippers and admitted by the carriers that industrial switching is performed to some extent by lighter engines than those used in other services. The engine-hour costs for industrial and weighing service should be somewhat less due to this factor.

Certain computations have been made by both shippers and carriers to show the effect of setting up separate engine-hour costs for industry switching. No attempt will be made to explain the details of these calculations except to state that various assumptions have been made by both parties which make the results doubtful. The effect on the total switching costs after making a complete redistribution of

engine-hour costs ranges from 2% to 4% reduction in the total switching costs. The carriers' computation shows a reduction of 2%, which is claimed to be too insignificant to warrant the refinement of methods desired by the shippers.

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The contention of the carriers that a reduction of 2% in total switching costs does not justify revision of the methods of determining the costs is not well founded for the reason that numerous small adjustments, if not offset by others, will materially affect the final result. While neither of the calculations appears to be conclusive, the evidence indicates that a reduction in the total costs should be made for these errors.

Transportation of Locomotive Fuel

The carriers claim (Exhibit 83, p. 122) that their cost data (Exhibit 7-A) is understated by the failure to include cost of transporting locomotive fuel used by the Trunk Lines where the coal was moved over their own rails. The carriers found that the average cost per engine-hour for locomotive fuel on certain switching roads was $2.42 while on certain Trunk Lines the average was $1.34.

The following table, taken from carriers' Exhibit 2, indicates the cost per engine-hour for locomotive fuel on each of the seven Trunk Lines and eight Belt and Industrial Lines:

FUEL COSTS PER ENGINE HOUR

Trunk Lines (7 Roads)		Belt and Industrial Lines (8 Roads)	
C. R. I. & P.	$1.83	I. H. B. (Blue Island Hump)	$1.31
C. & N. W.	1.65	C. W. P. & S.	1.58
C. B. & Q. (Gen'l. Yd.)	1.51	C. S. L.	1.75
C. M. St. P. & P. (Milw. Div.)	1.45	Pullman	1.79
Pa. (55th St.)	1.44	Ill. Nor.	1.90
Pa. (59th St.)	1.44	C. & I. W.	2.25
C. M. St. P. & P. (Chicago Ter.)	1.22	I. H. B. (Other)	2.41
I. C. (Markham)	1.20	B. R. C.	2.47
I. C. (Chicago Station)	1.20	B. & O. C. T.	3.12
Pa. (Colehour)	1.20	I. H. B. (Gibson Hump)	3.23
E. J. & E.	.97		
C. B. & Q. (Other Sw. Dist.)	.64		
Av. as computed by carriers	$1.34		$2.42

The difference between the above averages computed by the carriers of $1.08 per engine-hour was assumed to represent freight charges paid by the switching roads.

If the carriers are correct in stating that the difference in cost of fuel per engine hour represents transportation costs, it is exceedingly difficult to account for the great variations in these costs as shown by the above table.

For example, the fuel cost per engine-hour on the Chicago and North Western is $1.65, while for the Illinois Central Railroad Company it is $1.20, although both roads are Trunk Lines, and both have lines into the coal fields. It is also impossible to account for the enormous difference between the fuel cost per engine-hour of $0.64 on the Chicago, Burlington & Quincy Railroad Company and $1.83 on the Chicago, Rock Island and Pacific Railway Company. Likewise, in the group of Belt and Industrial Lines, we find a variation between the maximum and minimum cost of $3.23 and $1.31 respectively, although in each case transportation costs are supposed to be included. It is also surprising to

notice that these maximum and minimum unit costs were determined by the same railroad, the Indiana Harbor Belt Railroad Company, the maximum being at their Gibson Hump Yard and the minimum at their Blue Island Hump Yard. A further disturbing factor is indicated by the fact that the fuel costs per engine-hour of five out of seven Trunk Lines (the first six items in above table), which are supposed to exclude transportation costs, are in excess of the Indiana Harbor Belt Railroad Company's Blue Island Hump unit cost which is supposed to include transportation cost.

The above facts furnish a clue indicating that there must be other factors besides the cost of transportation of locomotive fuel which affect the final unit cost of fuel per engine-hour. We have given this matter some study and have concluded that there are many important factors which have a bearing on the final unit cost of the fuel per engine-hour.

A few of these factors are as follows:

1. Basic cost of fuel.
2. Cost of handling.
3. Heating values of various kinds of coal.
4. Quantities consumed by various types of engines.
5. Amount of non-productive engine time as related to net engine hours.

While there is no question that the Trunk Line Railroads are entitled to include as costs of the switching business the expense of transporting fuel over their own lines from the point of purchase to the District, they have utterly failed to make any proof as to the correct amount to be allowed. Fanciful calculations, such as those presented, are without meaning or value.

Abnormal Costs—One Week Test Period

The shippers claim that the costs are overstated by reason of the fact that the unit costs developed in the test periods in the year 1927 were applied to the traffic moving in the month of September, 1926, in which latter period the volume of traffic of many industries differed materially from that of the test periods. It is claimed that many high unit costs resulting from small volume in the test period were applied to large volumes in September, 1926, and that this effect is not offset by the low unit costs.

In support of this contention, the shippers have cited many instances (Exhibit 83, pp. 25, 26, 27, 28, 29, 45, 49 and 146) where high element costs resulting from low volume in the test period were applied to large volumes in September, 1926. An illustration of the shippers' criticism is that of the Pennsylvania Railroad Element No. 350, industrial switching at Albert Schwill & Co. During the test period of one week in October, 1927, four loaded cars were switched at this industry, producing an average cost of $15.83 per

car, (See note a), which cost was applied to 85 intradistrict cars moving in the month of September, 1926. This is an example of the development of a high cost based upon low volume in the test period which was applied to a large volume in another period.

In addition to the illustrations cited above, the shippers have made a computation (Exhibit 83, p. 175) showing that the application of costs developed in the test periods to traffic of different volumes in September, 1926, resulted in a much higher average study cost of industry and team track switching than the corresponding average for the weekly study periods. The amount of these excesses are $0.85 for single-line hauls, $0.60 for two-line hauls and

$0.33 for three-line hauls. Based on these figures the shippers conclude that the carriers' costs are overstated by the following amounts:

1-line hauls	$10,165.15
2-line hauls	6,895.20
3-line hauls	902.55

The carriers reply (Exhibit 83, p. 176) to this criticism by stating that any increase in the cost by application of high unit costs is offset by a reduction from the use of many abnormally low unit costs. They also cite the average switching costs developed in the cost study as evidence of efficient operation, the inference being that these costs are reasonable for this traffic.

It is extremely difficult to determine from the record the effect of this matter upon the costs developed in the study. The carriers' claim that high costs are offset by the low costs has some merit, however, it would take a great number of shipments at a cost *slightly* below normal to offset a few shipments at costs *much* above normal. This would necessitate a much greater volume of business in September, 1926, than during study periods, which condition is not shown by the evidence.

Note a. This cost compares with the average for the Colehour district (in which this industry is located) on the Pennsylvania Railroad of $1.89 per car.

The carriers' method of developing costs in one period of such short duration and applying them to traffic moving in another period is so confusing and unsatisfactory that serious doubt must arise as to the accuracy of the final results.

Demurrage and Weighing Revenues

In stating the revenues involved in this proceeding, the carriers have included nothing for demurrage or weighing,

although the expenses developed by the carriers include the expenses relating to those services. The record does not contain sufficient evidence to determine the amount of such revenues pertaining to the intradistrict movements or the amount of expenses in respect to such revenues. A check of the demurrage records for 1112 cars, moving during September, 1926, in intradistrict traffic, was made by representatives of this Commission. A fabulation of the results of this investigation showed actual collections of at least $1.88 per car. While the latter figure can not be considered to be representative of all the cars in the study, it does clearly indicate that demurrage is an item of revenue for intradistrict business and should not have been omitted by the carriers. The explanation given by the carriers in connection with this item, as also with several other items, that the adjustments were not made because of their insignificant character is futile when it is considered that the cost study has been made up through a collection of a multitude of small amounts.

Subordination of Switch Movements

The evidence shows that there are numerous grade crossings in the District, particularly on the Belt Lines, and that the established operating practice of the carriers is to hold switching traffic at such crossings for passenger and road freight trains to pass. An example is cited by the shippers (Exhibit 13, p. 41) of the run of the Indiana Harbor Belt

railroad from its Lake Front Yard to its Michigan Avenue Yard, a distance of 1.7 miles, requiring simultaneous clearance over five Trunk Line roads, which takes from 15 minutes to three hours with an average of 50 minutes (See also Exhibit 83, p. 42).

The carriers admit that the switch runs are subordinated to passenger and road haul movements but insist that the delays are properly chargeable to the switching business (Exhibit 83, p. 180). Since time is the basis of the cost study, whatever delays occurred during the test periods of 1927 were charged against the elements of transfer and interchange service developed during the test periods. These were later applied to the movements of District cars in September, 1926.

It is apparent that, while the operating practice may be entirely justified in the interest of rapid passenger and road freight service, all time incidental to delays at crossings should not be charged against the adjunct service of switching. There must be an equitable distribution of the time between the services benefited. It is apparent that with the complicated network of roads existing within the District, the delays incident to grade crossings must be considerable. The evidence is clear that an overcharge has resulted from the practice of the carriers in subordinating switching movements to through freight and passenger service, but the record does not disclose the extent thereof.

Errors in Transfer Costs

In the carriers' determination of the unit costs of transfer movements, certain errors have been made. During the test period yard conductors made up work reports classifying the work done by their trains during each assignment period. On these reports, designated as Form CS-1, the yard conductors showed the time devoted to each switching operation such as transfer and interchange movements.

When these reports were tabulated, the number of cars handled per hour in each element or type of service was

computed and the cost per engine hour was divided by the number of cars to determine the average cost per car for each particular operation.

The record (see Exhibit 84, pp. 193, 204 and 209) shows numerous illustrations of consecutive transfer movements made by the same train in which there is no lapse of time between transfer, but the composition of the train in the different transfer had changed. It is apparent that the number of cars in a train cannot change without some time being required to pick up or set out the cars. All of the time in the instances cited has been charged to the element of transfer switching. The carriers have attempted to justify their *cost methods* on the ground that the *operating practice* was in the interest of efficient operation. This explanation fails to show why proper apportionments of cost were not made between transfer and classification (or other) service. The final costs are distorted through the application of the incorrect element costs, but the exact effect cannot be ascertained from the record.

No Allowance in Cost Study for Increases in Wage Rates Since 1926

The carriers claim that the costs submitted are understated somewhat, due to certain increases in wage rates since the year 1926. While the carriers state that there have been increases ranging from 3 to 8% in the payrolls of the groups of employees involved, no evidence has been submitted to show to what extent these classes of employees have engaged in work relating to the District business, nor has evidence been submitted to show whether the increased wage rates have resulted in increased efficiency.

Omission of Switch Traffic Proportion of Cost of Maintaining main Tracks on Trunk Line Railroads

The costs submitted by the carriers contain nothing for the switching traffic's proportion of maintaining main tracks on trunk line railroad. The formula used in preparing the costs makes no provision for this expense probably because of the difficulty in making an equitable distribution between the various classes of traffic. While the main tracks are used principally by the traffic other than the traffic under review, it is nevertheless true that the switching business should bear some portion of the cost of maintenance and that the cost study is understated thereby.

Operating Ratio

All rates for service whether transportation or other service, generally should be sufficient to pay operating expenses and taxes and yield a fair return upon the fair value of the property used in performing the service. We have already discussed the evidence of cost of the service and come now to the provision for taxes and return on investment.

No evidence was offered as to the portion of the carriers' property which is used in performing intra district service or the value thereof. Neither was any evidence offered as to the amount of taxes chargeable to this traffic. Instead the carriers offered certain evidence as to the ratio (operating ratio) which in their opinion operating expenses should bear to the entire revenues; the difference between that per cent and 100 per cent representing the amount claimed for taxes and return.

The carriers' formula contains a figure of 66.67% representing operating ratio. This is simply a figure used to

demonstrate the application of the formula and does not have any weight in determining the proper operating ratio applicable in a particular case.

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The principal evidence of the carriers consists of data for the railroads of the country as a whole for the year 1926, indicating an operating ratio of 73.2% with a return of 4.4% on the investment. The carriers then attempted to show what operating ratio would have produced a return of 5.75%. This they claim to be 67.4%.

In this computation they seem to have made a very simple mistake in that they have assumed that whatever was added to the amount required for return would be deducted from operating expenses. Other than this computation there is no indication that the carriers are willing to cut operating expenses on the traffic under review in order to produce a larger net income. Their computation should have been on the basis of increasing the revenues to provide the necessary return. On this basis expenses would remain at 73.2 cents for each original dollar of revenue but the remainder of 26.8 cents would be increased to 32.6 cents making a new total revenue of $1.058. Of this revised revenue the operating expenses represent 69.2%. This is the true operating ratio developed from the carriers' figures for the country as a whole.

The carriers are not willing to accept the average operating ratio for the entire country, but claim that for the District an operating ratio of less than 66.67% should be used, the reason being given that with a greater investment per mile of road within the terminal limits a greater proportion of the revenues are required for taxes and return on the investment.

There is no question but that the investment per mile of

road in the terminal territory of Chicago greatly exceeds the investment per mile of road outside of the terminal. However, the record is not clear as to what proportion of such investment may be properly allocated to the intra district switching business. There is also the important ques-

tion of whether the volume of traffic is also greater in proportion to the increased investment per mile of road.

The shippers have attempted to show by a comparison of operating expenses per mile that the traffic is much heavier in the terminal as compared with railroad operations generally. If duplicate mileage due to trackage rights could be eliminated the computation would show still greater density.

The carriers object to the use of operating expenses as a test of volume of traffic and have made some estimates of car miles within the District comparing them with the car miles of the first operating division outside of the District. No evidence has been introduced as to the proper or actual operating ratio for the operating divisions adjoining the District. Such operating divisions no doubt move a much greater volume of traffic per mile of road than the roads as a while. Because of the unquestionable high traffic density of the operating divisions immediately adjoining the City of Chicago, a comparison, such as made by the carriers, would be unduly favorable to themselves. Since they are attempting to justify the use of an operating ratio determined from a study of the railroad operations in the country as a while, their comparison should have been between the District and the country as a whole, which, no doubt, would show a much greater difference in volume of traffic than was shown by the carriers' comparison with the adjoining operating division.

On the other hand the shippers' comparison of volume of traffic based on operating expenses per mile seems to have some value. Thus the monetary unit of the dollar is the basis of comparison. The carriers compare property values also on the basis of dollars invested. The carriers have based their evidence of the fair operating ratio upon computations of values, expenses and net incomes for the country as a whole in terms of the dollar. The amount re-

quired for a fair return and taxes will ultimately be in dollars. The ratio used to compute the provision for taxes and return will be applied to the particular operating expenses. The fact that those expenses are *great* (as shown infra), will have a very definite result in *increasing* the amount provided for the fair return and taxes when the ratio is applied thereto. Therefore, in our opinion, operating expenses represent a reasonable index of the density of traffic.

It is contended that the intradistrict switching business is more costly than other business due to the shipments originating and also terminating at industries within the District which are said to involve higher industrial switching costs than at points outside of the District. The record also shows that the tracks in the District were not laid out to take care of this business which fact tends to create more costly operations. On the supposition that this business is more costly, an operating ratio higher than the average could be applied because the higher the operating expenses, the higher the operating ratio required to earn a fair return on the same value.

The record also indicates that a considerable portion of the industry tracks in the District are owned by the shippers on which the carriers are not entitled to any provision

for taxes and return. This appears to be a matter of great importance but unfortunately the record is not clear as to what proportion of the industry tracks are owned by the shippers. The application of an operating ratio, without ascertaining and giving proper effect to this matter would work serious injustice to the shippers.

The record also contains evidence as to operating ratios used in certain other switching cases. These ranged from 77.2% to 86.6%.

Other evidence was introduced by the shippers indicating that nine of the principal switching roads in Chicago terri-

tory would earn an average of 5.75% on their investment if their operating ratio was 72.2%. The record also shows that on the basis of the Interstate Commerce Commission's tentative valuation these same nine carriers would earn 5.75% if the operating ratio was 76.8%. The shippers contend that no operating ratio lower than 76.8% should be used.

A comparison of the details in shipper's Exhibit 13 indicates that 48% of the "Switching Cost" in the study was incurred on railroads included among the nine carriers whose operations indicated an average operating ratio in excess of 76%. If the E. J. & E. is excluded from this computation the results indicate that 68% of the "Switching Cost" in the study was incurred on railroads included among the aforementioned nine carriers. It is also shown that eight out of the nine carriers used by the shippers in the study of operating ratios were included in the cost study.

While these nine switching roads handle a considerable volume of business other than intra district switching, it has also been shown that they handled the major portion

of intra district traffic in the study. The shippers' evidence concerning these roads has the value of being closely related to the District and to the traffic in question.

The process of determining the proper rate or revenues to be collected by having only one known quantity, namely, the operating expense, and applying thereto a percentage or operating ratio, which, in itself, is a very uncertain quantity, is a very unsatisfactory and haphazard method. The correct and complete proof which the carriers should have presented in this case would include proof of the fair value of the property used and useful in handling the District business, proof of a fair rate of return which they should earn on the said property, proof of taxes actually paid on said property and proof of the proper operating

expenses in connection with said business. We recognize that the preparation of such proof would entail considerable work on the part of the carriers; however, we do not believe that fact is an adequate reason to justify the carriers in presenting only testimony as to an operating ratio, based upon operations in the country as a whole, involving not only this territory but other locations where conditions are very different, and including not only freight, but passenger, mail, express and all other classes of railway operations.

COMMODITIES

Evidence was submitted by various parties interested in the transportation of particular commodities, with the purpose of securing a continuation of present rates on those commodities. Some of the contentions advanced in connection with a number of the commodities moving in large volume, are hereinafter set forth:

GRAIN. At present wheat, corn, oats and other grains move in large part within the District on exceptions under the Lowrey basis, and it is proposed by the carriers to place grain generally upon the Lowrey basis, such proposal growing out of the general investigation of switching rates instituted by the Interstate Commerce Commission under its Docket 19610. The tariffs under suspension by this Commission do not propose to place the rates on grain and grain products on the Lowrey basis, but are under consideration here solely because of the general investigation ordered by the Interstate Commerce Commission.

It appears from the evidence that based upon the traffic analysis of September, 1926, the principal grain movement consists of corn in two-line hauls, both interstate and intrastate in Illinois, although there is a substantial intra district movement of all grains, in one, two and three-line hauls. This greater movement of corn may be attributed to the extensive manufacture of corn products within the

District, and to the facilities for drying wet corn for market with which the district is said to be especially equipped.

The testimony of the shippers generally concerned the manner of merchandising grain, total amount of available grain and storage facilities around Chicago, the amount of grain in storage at various dates, and the so-called reciprocal and proportional switching charges on inbound and outbound movements at Chicago, compared with similar charges in various other switching districts such as St. Louis, Missouri, Minneapolis, Minnesota, Kansas City, Missouri, and Omaha, Nebraska. This evidence clearly indicates the importance of Chicago as a primary grain market. The carriers contend that charges per car in other switching districts, brought into comparison by the shippers, are

either so-called "reciprocal" switching charges which are not in issue, or proportional charges which are incomplete unless combined with other charges of that class to make the through cross-town charge; and that the shippers' comparison is unaccompanied by any showing of similarity of conditions.

The principal witness for the grain interests urged that the charges for the intra district switching of grain within the District should be absorbed by the carriers—at least to the extent of one intra district switching service. The evidence does not show that the line haul rates are adequate to compensate the carriers for the additional switching service performed in the District; nor does it show that the intra district movement should be considered in the light of transit arrangements or as so-called "reciprocal" switching as suggested by the shippers' witness. They constitute distinct services and justify distinct charges when rendered.

The extent of the cross-town switching of grain, including

the intra plant movement, was shown to be as follows:

In 1921	20,851 cars
In 1922	14,745 cars
In 1923	14,586 cars
In 1924	19,672 cars
In 1925	25,891 cars
In 1926	26,865 cars
In 1927	18,655 cars

The record shows that grain generally loads much heavier than the 60,000 pound minimum usually exacted on shipments in the District. It is contended that the present rates on grain which have always been less than the Lowrey basis in the District, are related to the entire line haul grain rate

structure and the competition with other grain markets and milling points, and that the present rates, if not absorbed, should be permitted to remain in effect.

Coke. The coke interests were represented solely by the By-Products Coke Corporation of Chicago, with plant located at South Chicago, Illinois, which claims to be the largest producer of coke for the general market in the United States. This company carbonizes 1,500,000 tons of coal each year, and produces 1,250,000 tons of coke. In addition it owns and operates a blast furnace in South Chicago. Yard tracks and scales are owned and maintained by the industry at its coke plant. The Chicago Short Line performs the switching at that point.

During the year 1926 the coke plant shipped 28,816 carloads of coke, light oil, ammoniacal liquor, and coal tar, of which 26,948 carloads were coke. The coke was distributed as follows: 5050 carloads in one-line hauls less than one mile in length; 12,099 in two-line hauls; and 9799 in three-line hauls. The one-line hauls were made in private cars for which no allowance is made. Of the two-line hauls 6120 cars were destined to points outside of the District. The carriers submitted traffic statistics for the month of September, 1926, only, but measured by that month

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there must be a considerable movement of coke in addition to that of the By-Products Corporation. The carriers show for that month a total movement of 6716 cars. While the shipper herein named estimates that 90% of its coke moves in Illinois intrastate traffic, the carriers' statistics show that about 58% of the total movement of coke in the District is interstate. The carriers' statistics for September, 1926, show that the distance of one-line hauls ranges from 1.3 to 11.97 miles; two-line hauls 2 to 56.9 miles; and three-line hauls 8.5 to 37.4 miles. The following shows the aver-

age distances of those hauls and the weighted average revenue at present and proposed Lowrey basis of rates:

Interstate				Illinois				Indiana			
		Revenue Per Ton				Revenue Per Ton				Revenue Per Ton	
Cars	Average Distance	Present	Proposed	Cars	Average Distance	Present	Proposed	Cars	Average Distance	Present	Proposed
	(miles)	(cents)	(cents		(miles)	(cents)	(cents)		(miles)	(cents)	(cents)
					One-Line						
3	(1) 7.0	50	60	55	3.95	50	60	....	.....	....	....
3374	(1) 11.97	60	60	.....	.....	.....	.....	548	(1) 11.97	60	60
37	(1) 11.97	12	12	478	5.94	40	40	....	.....	....	....
					Two-Line						
138	23.84	50	70	1239	7.30	50	70	....	.....	....	....
12	46.82	73	87	14	12.79	71	88	....	.....	....	....
277	(1) 12.70	45	45	.....	.....	.....	.....	....	.....	....	....
					Three-Line						
....	.....	....	....	410	25.95	60	80	....	.....	....	....
....	.....	....	....	78	28.24	76	92	....	.....	....	....
....	.....	....	....	53	10.29	50	71	....	.....	....	....
3841				2327				548			

(1) Actual Distance as shown in Exhibit 11-A.

Evidently the heaviest movement is in one-line interstate hauls at the rate of 60 cents per ton for a haul of 11.97

miles, which is ten cents over the present Lowrey basis. No increase is proposed in that rate. There is a substantial one-line movement in Indiana and a heavy three-line movement in Illinois. The Indiana one-line movement is on a rate ten cents per ton above the present Lowrey basis. This leaves a substantial tonnage now moving on rates less than the present Lowrey basis with respect to which no change is proposed, together with a somewhat smaller tonnage which now moves on rates considerably over the present Lowrey basis, respecting which an increase is proposed. Doubtless some of the latter tonnage moves over the E. J. & E. and some deliveries by the Chicago and North West-

ern Railway and Chicago, Milwaukee, St. Paul and Pacific in the so-called outer district, for which an arbitrary of one-half cent per hundred pounds is added to the Lowrey rate.

The By-Products Coke Corporation subscribes to a uniform basis of rates, provided no increase is made in the present rates, admitting that an additional charge for the use of team tracks would be justified. The testimony in protest of higher rates refers to an increase of approximately $170,000 per annum in its transportation charges on coke alone; to the use of private cars in the one-line hauls for which no allowance is received; and to certain elements of service contained in the carriers' costs which the shippers claim should be eliminated. The movement in private cars is Illinois intrastate and at rates which are ten cents per ton under the Lowrey basis.

A witness for the By-Products Coke Corporation testified that a large portion of the cars which they send out under load, whether for line haul or switching movement, are cars which have previously come into the plant under load.

PACKING AND PACKING-HOUSE PRODUCTS. The testimony submitted on behalf of the packing industry dealt almost exclusively with the short hauls within the Chicago Stock Yards District over the Chicago Junction Railway which

line is divided into districts. Within those districts are located plants between which there are movements of certain commodities. The Chicago Junction Railway was not one of the cost-study roads. Its local or single line movements are all Illinois intrastate and range from 200 feet to a mile. Most of the movements are in privately owned refrigerator cars, usually loaded in both directions. The evidence shows that the number of cars owned by the Chicago Junction Railway is inadequate to handle the business and

without the use of those private cars the carrier would necessarily incur a per diem charge of $1.00 for the use of foreign cars. The following table compiled from an exhibit of record shows the present charges applying on the Chicago Junction Railway for both inter district and intra district movement:

Chicago Jct. Cars Loaded		Chicago Jct. Cars Empty		Private Cars Loaded		Private Cars Empty	
Intra Dist.	Inter Dist.	Intra Dist.	Inter Dist.	Intra Dist.	Inter Dist.	Intra Dist.	Inter Dist.
$7.15	$15.00*	$3.15	$4.50	$3.15	$12.00	$3.15	$4.50

*Minimum 60,000 pounds at 2.5c per cwt.

Tariffs have not been filed by the Chicago Junction Railway proposing increases in the rates here under consideration, and therefore the measure of these rates is not before this Commission.

SAND, GRAVEL, AND CRUSHED STONE. These commodities are almost invariably classed together for rate-making purposes. The producers of crushed stone assert that gravel is produced and shipped largely from nearby points outside of the District which are located on trunk lines able to make local delivery and that the points of production of crushed stone within the District are located on switching roads which require a connecting line delivery. It is shown that gravel now moves from nearby points outside of the District on single-line rates of 65 cents per ton, while the crushed stone referred to moves within the District on two-

line switching rates of 50 cents per ton, which under the proposed adjustment would be increased to 70 cents per ton, resulting in a spread of five cents over the gravel rates.

A witness for the crushed stone producers stated that the cost to produce a ton of stone is two to three and a half times greater than the cost to produce a ton of gravel.

Exhibits 40 and 41 introduced in evidence indicate that the average per-car weight of crushed stone within the District for the years 1925 and 1926 was 53.74 and 53.47 tons respectively. Other exhibits of record indicate that the preponderance of the movement of crushed stone is Illinois intrastate movement.

The producers of crushed stone within the District are in accord with the general plan of a uniform rate basis and are not in favor of a zoning plan, due, as alleged, to the discrimination that generally results therefrom. It is suggested, however, that if there is any change to be made in the present rates on crushed stone, the following basis be adopted:

Weight (pounds)	One-Line (per car)	Two-Line (per car)	Three-Line (per car)
60,000	$12	$15	$18
80,000	16	20	24
100,000	20	25	30

The adoption of the foregoing suggestions would be a departure from either the present or proposed Lowrey basis. It would result in a decrease in the present one-line charge and decreases in all charges under the proposed basis.

Some general statements were made by the interested shippers of these commodities showing the availability of present and potential transportation by water within the District, in competition with transportation by rail, and the stimulation of delivery by motor trucks in the event of an increase in the rail rates.

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The producers of sand which is brought into the District for distribution, submitted testimony of a character somewhat similar to that submitted by the producers of crushed stone.

LUMBER. The Chicago Retail Lumber Dealers Association representing 135 lumber yards out of a total number of approximately 258 in the District, submitted testimony to the effect that the present rates and a uniform rate basis are satisfactory to its members. Lumber generally moves on the Lowrey basis, and under the tariffs filed in this proceeding it is proposed to increase the rates to 3, 3½ and 4 cents per hundred pounds, respectively, for one- two and three-line hauls. These shippers urge that the present rates be retained and state that from 4000 to 5000 carloads of lumber per year, are switched within the District, but that 80% of the entire lumber movement is by truck. It is contended that a still larger tonnage will move by truck if the present rates are increased. It is also contended that a substantial number of carload shipments of lumber does not load to the minimum weight of 60,000 pounds, which has the effect of increasing the actual freight cost per hundred pounds.

CORN PRODUCTS. This testimony was presented by the Corn Products Refining Company of Argo, Illinois, and the American Maize Produes Company of Roby, Indiana, both located within the District. The principal products of corn are starch, syrup, sugar, oil, gluten feed. and meal. The Corn Products Refining Company owns and maintains seventeen miles of track, representing an investment of $630,000, and the American Maize Products Company three miles of track, representing an investment of $120,000, within their respective plant enclosures. These facilities are used both for line-haul and intra district switching operations. with the former predominating. In opposition to any increase in the rates, these producers show that the greater part of their shipments within the District weigh

less than the minimum of 60,000 pounds, which results in the payment of average freight charges from six to nine

mills per hundred in excess of the rates now in effect. This is not due to the inability of observing the minimum in physical loading, but is done to meet the competition resulting from the lower minima of 36,000 and 40,000 pounds, applicable in connection with the road haul movements.

These producers contend that transit rates should be published on corn in, and the products out, destined to points in the District, with provision for the absorption of switching charges. They assert that switching charges are absorbed at St. Louis, Missouri, and East St. Louis, Illinois, on the products of corn milled at those points, and on sugar out of storage at Chicago for delivery in the District, and which originates on the Chicago and North Western and connections west of the Mississippi River. Comparisons were also made of the switching charges at Chicago with the charges within other switching districts such as Buffalo, New York, Detroit, Michigan, Cincinnati, Ohio, and Boston, Massachusetts, but no showing was made of comparative conditions which is required in order to make the comparisons of value. These shippers contend that lower rates should prevail in the District because of the greater density of switching traffic. In a large measure, the testimony involved transit privileges and line-haul rates alleged to be prejudicial to Chicago and preferential to other remote points.

Tar Products. This item embraces roofing and paving tar, paving pitch and some creosote oils. The products move almost entirely in private tank cars, for which no allowance is made. The record indicates that the tar products generally move on the full Lowrey basis. The Chicago & Illinois Western publishes a one-line rate of $9.00 per car for the comparatively short haul applicable on Illinois intrastate traffic. It handles five or six cars a

day on that rate. That carrier is desirous of continuing the rate of $9.00 rather than be deprived of the business which, it was testified, would be diverted to water transportation if the rate is increased.

The use of private tank cars for the transportation of tar products which results in the elimination of per diem charges and costs to carriers for maintenance of equipment and other costs incidental to ownership was especially stressed. Comparison was made of the average earnings of $22.50 on certain loaded tank cars of coal tar with the approximate cost of $11 for handling the car in a three-line movement. It does not appear, however, that the cost for the empty movement was considered and ordinarily the use of private tank cars for particular commodities exclusively involves 100% empty movements.

IRON AND STEEL. Testimony was introduced by witnesses representing steel industries located within the District at Indiana Harbor, Indiana, and East Chicago, Indiana, South Chicago and Grand Crossing, Illinois, and on behalf of the steel industries outside of the District located at Chicago Heights and Evanston, Illinois. The testimony referred generally to the influence of freight rates upon the original location of the steel industries within the District; to the history of those rates; and to such transportation factors as the volume and heavy loading of iron and steel billets, pig iron and scrap iron, which ordinarily are influential in obtaining reduced line-haul rates, and the fact that shippers in Central Freight Association territory can ship iron and steel to the District on a minimum of 36,000 pounds, while it is necessary to pay on a 60,000 pound minimum on shipments moving within the District so cited.

Rates in effect at other switching districts were cited by

the steel interests, which it is contended moves considerable traffic and indicates such rates are lower than the District rates. Exhibit No. 19 was introduced in evidence showing the movement of 100 cars. This exhibit shows that the average detention from the time the cars were set for loading at the plant until they were released was 4.7 days. From this showing it is contended that it is clear that there is no congestion in the District, evidenced by the prompt handling of the cars.

The witness introducing Exhibit No. 19 desired to have the Lowrey basis of rates continued with certain exceptions to take care of special movements, and contends that any increases in the switching rates will divert a large volume of tonnage to the highways.

It is further shown that most of the outbound tonnage from the steel mills is loaded in cars which were received under load.

Railway Equipment. Freight, passenger, work and other equipment on its own wheels is generally hauled within the District at a per car rate, but rates per hundred pounds are published by certain carriers. The charges for this service differ widely, and rates are not upon the Lowrey basis. It is the desire of the carriers as well as the manufacturers to continue to move this equipment on the excepted rates. A number of the carriers contemplate no change in these rates. In instances where increases are proposed, the increased rates will continue to be upon a per car basis, or upon a weight basis lower than the Lowrey basis. Railroad equipment was not included in the carriers' cost study. It appears that new cars frequently move in train lots directly from the yards of the car companies to connecting line purchasing the car.

OTHER COMMODITIES. Testimony similar to that already discussed was presented in connection with brick, building tile, coal and coke, and various other commodities. These commodities move within the District in carrier equipment, except in the case of some coal and coke shipments.

EX-LAKE TRAFFIC. Switching rates on Ex-Lake traffic moving directly or indirectly between docks and industries within the District are generally higher than on ex-rail traffic. The record indicates that at various times the tariff provision excluding ex-lake traffic has been withdrawn by certain carriers and subsequently reinstated. Under the proposed tariffs certain of the carriers have withdrawn the restriction. The present switching rates on ex-lake traffic range from 60 to 100% higher than rates on corresponding ex-rail traffic. The proposed rates over the lines of carriers which do not intend to withdraw the restriction would range from 43 to 100% higher on ex-lake traffic than on corresponding ex-rail traffic.

The shippers through the Chicago Association of Commerce urge that all restrictions be removed from ex-lake traffic and that it be accorded the same level of rates as ex-rail traffic. It is stated that thousands of dollars have been spent to increase the facilities for the handling of lake traffic and that the continuance of the rule excepting ex-lake traffic will greatly retard the development of Chicago as a port, and minimize the benefits resulting from the improvements in the water service.

As hereinbefore stated, under the proposed tariffs certain of the carriers have withdrawn the restriction against the application of the Lowrey basis of rates on ex-lake traffic. There is nothing in the record to indicate that the carriers proposing to eliminate this restriction should not

be permitted to do so but there is sufficient evidence to indicate that the removal of this restriction is desirable.

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Although there is no proposal before this Commission with reference to other carriers, defendants herein, no objection should be made to the proposals under suspension with reference to ex-lake traffic whereby certain carriers propose to remove their restriction against the application of the Lowrey basis of rates.

RATES BETWEEN CHICAGO HEIGHTS, ILLINOIS, AND CHICAGO SWITCHING DISTRICT

Chicago Heights was founded about 1890 as an industrial center adjacent to the Chicago Switching District. It now has a population of approximately 30,000, with about 85 industries. During 1927, 15,251 carloads were moved between this point and the District. It is 26.6 miles south of the Chicago Station on the Chicago and Eastern Illinois Railway and 3.7 miles beyond the southern boundary of the Chicago Switching District. Local switching at Chicago Heights is performed by the Chicago Heights Terminal Transfer Railway which is solely a switching carrier serving 83 of the industries located at that point. Between Chicago Heights and the District the movement is performed as switching by the Baltimore and Ohio Chicago Terminal, and the Chicago and Eastern Illinois jointly with its subsidiary, the Chicago & Western Indiana.

Prior to 1900 various rates were in effect between the two districts. In 1900 a rate of $5 per car was established by agreement between the Chicago Heights Terminal Transfer and the Chicago and Eastern Illinois Railway. Since 1907 the inter district rates generally have been maintained upon a parity with the rates within the Dis-

trict. This is illustrated by the following chronological table beginning in 1907, compiled from the exhibits of record:

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	Per Car (1) Minimum 60,000 pounds			Per Hundred Weight Minimum 60,000 pounds				
	1907	1908	1909	1911 cts.	1918 cts.	1920 cts.	1922 cts.	Present cts.
Chicago Heights to/from Chicago Switching District	$5.50	$5.50 to 8.00	$5.50 to 8.00	1.5	2.0	3.0	2.5	2.5
Within Chicago Switching District	$5.50 to 13.00	$5.50 to 13.00	$5.50 to 10.50	1.5	2.0	3.0	2.5	2.5

(1) Excess 18.3 cents per ton.

Both the Chicago Heights shippers and the carriers directly serving that point urge that the existing rate parity between Chicago Heights and the District be maintained, and that Chicago Heights be included within the District. The proponents, for including Chicago Heights in the District, compared it with industrial centers suburban to Chicago which are now within the District, namely, Harvey, Illinois, Indiana Harbor and Hammond, Indiana. Witnesses testified that Chicago Heights has grown from a town of approximately 5000 to a prosperous city of approximately 30,000; that the growth has been largely due to the existence of the District and that the future existence of Chicago Heights as an industrial community depends very largely, if not entirely, upon the continuation of this basis of rates, and any disturbance of this relationship will have an injurious effect upon the industrial and civic welfare of Chicago Heights. One of the shippers' exhibits shows that the earnings on various commodities moving in line-haul service for so-called short-haul dis-

tances ranging from 21 miles to as high as 250 miles, to be from $10.50 to $24.00 per car. It appears that with few exceptions the shipments represented one-line movements. These earnings are compared with the per car earnings under the proposed rates of $18, $21 and $24 for the one, two, and three or more line movements.

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The carriers presented evidence relative to cost and certain statistics pertaining to traffic between Chicago Heights and the District, which evidence was prepared in the same manner as that submitted for the District.

The costs claimed by the carriers for the Chicago Heights traffic were 2.5, 2.9 and 2.5 cents per hundred pounds for two-line, three-line and four-line hauls, respectively. Most of the carriers' claims of understatement of cost in their original figures (Exhibit 7A) and the shippers' claims of overstatement were centered about the district traffic without much consideration of the Chicago Heights business. Nevertheless the record shows that the costs for the Chicago Heights traffic were prepared in the same general manner as the District costs. They are therefore subject to the same general objections as the District costs.

As illustrations, we may point to the increased cost of winter operations, the cost of transporting company fuel, the reductions on account of separate engine-hour costs for switching at industries and reductions in car detention costs. These are some of the general criticisms of both carriers and shippers which also affect the Chicago Heights costs.

In addition to the foregoing general criticisms, it appears that the costs include an item of $6.00 for every car originating or terminating on the Chicago Heights Ter-

minal Transfer Railroad, which is the amount the other carriers pay the said railroad for handling the car. This is a division of revenue and does not represent cost. The actual cost should have been determined on the said road and combined with the costs of the other carriers. The evidence shows that the average cost per loaded car handled by this road was $3.02 in 1920 and $4.22 for the first seven months of 1923.

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Since the record does not show how the Chicago Heights cost data is affected by the many general criticisms which are also applicable to this study, it is not possible to determine the true costs of handling this traffic. Therefore, no justification has been shown for changing the Chicago Heights rates.

Desplaines, Illinois and Arbitrary Stations

DesPlaines, Illinois, is situated 16½ miles northwest of the city limits of Chicago, but within the outer zone of the District. It is a so-called "red line" station on the Minneapolis, St. Paul & Sault Ste. Marie Railway and the Chicago and North Western Railway from and to which no joint switching rates apply. Greenhouses are its principal industry from which flowers are shipped into Chicago. Over 900 cars of various commodities were received during 1927 from points within the District.

It appears that there are other flower growing centers within the District with which DesPlaines competes and which have the advantage of the District switching rates. The record is not clear as to why in the first instance, the District was extended to include stations such as Des Plaines without the application of the District rates in some instances and applying them in other instances with an arbitrary added.

The shippers urge that the entire outer zone of the District be granted the flat switching rates without the addition of arbitraries of one-half cent per hundred pounds generally, which now apply to and from so-called "green line" stations.

The carriers indicate that if the proposed rates on the all-commodity basis are found reasonable, they would not object to abolishing the arbitraries and would apply the all-commodity rates to the outer zone stations.

The tariffs under suspension by the Illinois Commerce Commission in this proceeding do not propose to make any change in the present arbitraries in effect at stations in the northwest side of the District; nor is it proposed to extend the benefit of switching rates to stations such as

DesPlaines, Illinois, where such rates are not now in effect. The issues here before the Commission are not sufficiently broad for it to order an elimination of the present arbitraries or a change in the rates to or from DesPlaines, Illinois.

GENERAL

Exhibit No. 97 shows the distribution of all cars moving in the District during the month of September, 1926, as between Illinois intrastate, Indiana intrastate, and interstate traffic. This exhibit shows that 53.3% of the total traffic moved Illinois intrastate, while the interstate movement represents 40.3%, and the Indiana intrastate movement but 6.4%. This illustrates the importance of the Illinois intrastate movement as compared with the interstate and the Indiana intrastate movement.

The relative length of haul of intrastate and interstate switching district cost study cars has been taken from Exhibit No. 97, with the following result:

	Intrastate		
	Illinois	Indiana	Interstate
One-line hauls—Average haul (in Miles)....	14.7	6.3	15.0
Two-line hauls—Average haul (in Miles)...	15.9	7.3	27.5
Three-line hauls—Average haul (in Miles)...	23.4	....	34.2

It will be noticed that the average one-line haul in miles for Illinois intrastate traffic is 14.7 miles, while the interstate haul is 15 miles; the average for the two-line hauls on Illinois intrastate traffic is 15.9 miles, while the interstate average is 27.5 miles; the average three-line haul for

Illinois intrastate traffic is 23.4 miles, while the interstate is 34.2 miles.

The record shows that at the beginning of this proceeding the carriers were generally in favor of the Lowrey basis of rates, and were of the opinion that they had been a decided advantage to both the shippers and carriers in the District.

Exhibit 64 was introduced at the May, 1928, hearing by Witness Galligan, showing the exceptions in which no changes were proposed. At that time no proposal had been made by the carriers with reference to the elimination of various exceptions to the Lowrey basis, but at the hearing in September, 1928, the carriers made an entirely different proposal and filed Exhibit 85 showing the rates to be increased, proposing to eliminate many other exceptions to the Lowrey basis. Tariffs have not been filed covering proposed increases in certain Illinois intrastate rates, and while those rates may be properly before the Interstate Commerce Commission in its Docket 19610, they are not before the Illinois Commerce Commission.

It is contended that the development of industry in the

District is due, in a large measure, to the cooperation of the carriers in the establishment of the Lowrey basis, which arose as a voluntary agreement between the carriers. It is further contended by the protestants that the destruction of the Lowrey basis or the establishment of prohibitive switching rates will greatly interfere with the development and expansion of the industrial district of Chicago, and that the disruption of business in such a fashion should not be permitted by the Commission on such a showing as the carriers have made in this proceeding.

It appears from the evidence that the Lowrey basis of switching rates has been of great advantage to both the shippers and carriers alike. The shippers are almost unanimously in favor of retaining the present system of Lowrey rates with exceptions thereto, and as hereinbefore

stated, at the beginning of this proceeding the carriers likewise proposed to continue many exceptions to the general basis, and admitted that such rates had been advantageous to both parties.

The protestants contend that if the proposed increases become effective, the charges resulting therefrom will, in many cases, nullify investments, compel the relocation of industries, and the substitution of highways or waterways for all rail movements. There is much evidence in the record to the effect that a substantial increase in switching rates in the District will result in the diversion of considerable additional traffic to the highways and to the waterways. The record shows that the District has many improved highways, making it possible for a large volume of tonnage to move expeditiously via trucks. An exhibit of record shows the navigable waters in the Chicago Dis-

trict. A number of witnesses testified as to the extent of present movement via the highways and waterways and the possibilities in case higher rates are put into effect. It appears clear that these competitors have already made important inroads upon the rail traffic in the District, and with the construction of additional public highways will, no doubt, absorb more of the business. We do not believe this to be an idle threat. A material increase in the present rates would, no doubt, divert traffic from the railroads, not only through the motor truck and barge competition, but by relocation of industries and other rearrangements, which would largely offset the revenue the carriers expect to receive from such increase.

As hereinbefore stated, this proceeding is the outgrowth of the decision of the Interstate Commerce Commission in Docket 15110, *Jones & Laughlin Steel Corporation* v. *B. & O. R. R., supra.* No general investigation of the rates in the District was instituted by the Illinois Commerce Commission; therefore, since no switching rates,

other than those proposed in the suspended tariffs, are before this Commission, no action other than passing upon the reasonableness of the proposals, based upon the evidence submitted, can be taken by this Commission.

The review of a rate adjustment so important to an industrial center, such as Chicago, cannot be taken lightly by the Commission. The welfare of the carriers and the growth of industry at Chicago are closely related. The traffic moving within the District reflects the development of manufacturing and of other enterprises within the District, and as this traffic increases, the line-haul traffic of the carriers also increases, as in many instances the intra district movements of raw material result in subsequent line-haul movements of finished products.

FINDINGS

The burden of proving that the increased charges proposed are just, reasonable and lawful is upon the respondent carriers. Carriers depend upon the cost study as their sole justification for the proposed increases in switching rates. The record is entirely lacking in traffic evidence upon which the Commission could find that the proposed rates are justified.

It is contended by the shippers that the cost study made in this proceeding must be disregarded as it constitutes no fair basis of evidence as to what the service costs the carriers. It is further contended that the study ignores the fundamental fact that switching is performed as an accessorial service to the primary purpose of road-haul service and that it should not bear the total burden of delays caused by the road-haul trains.

A decision of the Interstate Commerce Commission was referred to by the shippers in the case involving *Switching at St. Louis and East St. Louis*, 120 I. C. C. 216, where the

Coverston-Saur formula for arriving at costs was involved, wherein the Commission said:

> "Like others, the one before us contains some flaws and irregularities, but there is nothing surprising about the cost per-car shown. They are such as we would expect to find in a large terminal district. Upon the whole we see no reason for not taking the respondent's cost figures as indicating that switching in the St. Louis District is a rather expensive service. *A cost study is ordinarily little more than a very rough indication, and even if unusually comprehensive and exact, it should not be the sole basis for fixing rates. The value of the service to the shipper, and many practical considerations, may be of equal or greater importance.*"

We are of the opinion that the cost study upon which the carriers have relied in these proceedings as a basis for increasing their rates is so inaccurate that it is not a reliable guide as to the actual costs of the services rendered.

After giving full weight and consideration to the evidence presented in these proceedings, we are of the opinion that it is clearly insufficient to justify the increased rates proposed or any change in the present rates.

The Commission having considered the evidence both oral and documentary and statements of counsel and being fully advised in the premises is of the opinion and finds:

(1) That the traffic included in the cost study moving over certain railroads selected by the carriers is not representative of the intra-district traffic as a whole;

(2) That even approximate costs of handling the study cars cannot be determined from the present record;

(3) That the record is entirely silent as to the costs of handling the "other" cars not included in the study;

(4) That the record does not contain sufficient evidence to determine the proper amount to be allowed for taxes and return on investment;

(5) That the proposed changes in rates involved in these proceedings have not been justified;

(6) That the schedules filed by the Illinois carriers purporting to establish revised rates, effective April 30, June 1, and July 8, 1927, and in so far as they propose to advance the rates on brick, tile and articles taking the same rates, effective May 5, 1927, applicable to Illinois intrastate traffic, under suspension in these proceedings, should be permanently cancelled, annulled and set aside on or before November 10, 1931;

(7) That the prayer of the complainant in Docket 17513, *Illinois Slag & Ballast Company versus The Chicago, West Pullman and Southern Railroad Company, et al.*, should be denied, and the cause dismissed and stricken from the Docket of the Commission.

IT IS THEREFORE ORDERED that Supplement No. 30 to Tariff No. 10265-E, Supplement No. 26 to Ill. C. C. No. 288, of The Atchison, Topeka and Santa Fe Railway Company; Local and Proportional Freight Tariff No. H-2687-0, Ill. C. C. No. WL-675, and Local Freight Tariff No. C. T. H. 388-G, Ill. C. C. No. WL-676, of The Baltimore and Ohio Railroad Company; Supplement No. 1 to Tariff I. P. U. C. No. 94, Supplement No. 1 to Tariff Ill. C. C. No. 104, Supplement No. 1 to Tariff Ill. C. C. No. 107, Tariff Ill. C. C. No. 182, Tariff Ill. C. C. No. 183, Item No. 6, Tariff Ill. C. C. No. 184, and Item No. 6, Tariff Ill. C. C. No. 185, of The Baltimore and Ohio Chicago Terminal Railroad Company; Supplement No. 1 to Tariff No. 131, I. P. U. C. No. 73, Supplement No. 1 to Joint Tariff No. 137, Ill. C. C. No. 92, and Local and Proportional Freight Tariff No. 122-P, Ill. C. C. No. 115, of The Belt Railway Company of Chicago; Supplement No. 45 to Tariff No. 2-I, Ill. C. C. No. 716, of The Chicago and Alton Railroad Company, William W. Wheelock and William G. Bierd, Receivers; Tariff Ill. C. C. No. 18, of the Chicago and Calumet River Railroad Company; Supplement No. 23 to Freight Tariff No. 95-A, Ill. C. C. No. 74, Supplement No. 23 to Freight Tariff No. 235-A, Ill. C. C. No. 112, Supplement No. 11 to Freight Tariff No. 325-B, Ill. C. C. No. 128, Supplement No. 29 to Freight Tariff No. 500-B, Ill. C. C. No. 135, and Supple-

ment No. 4 to Freight Tariff No. 175-E, Ill. C. C. No. 153, Supplements Nos. 22 and 23 to Freight Tariff No. 775, Ill. C. C. No. 43, Supplement No. 1 to Freight Tariff No. 850-A,

Ill. C. C. No. 166, and Supplement No. 2 to Freight Tariff No. 600-B, Ill. C. C. No. 167, of the Chicago and Eastern Illinois Railway Company; Supplement No. 30 to Tariff 516-A, Supplement No. 29 to Ill. C. C. No. 2-A, Supplement No. 14 to Tariff G. F. D. 517-A, Supplement No. 13 to Ill. C. C. No. 3-A, Supplement No. 15 to Tariff G. F. D. 517-A, Supplement No. 14 to Ill. C. C. No. 3-A. Supplement No. 8 to Tariff G. F. D. No. 520-D, Supplement No. 7 to Ill. C. C. No. 12-A, Supplement No. 9 to Tariff G. F. D. No. 520-D, Supplement No. 8 to Ill. C. C. No. 12-A, Supplement No. 5 to Tariff G. F. D. No. 516-B, Ill. C. C. No. 13-A, and Joint Freight Tariff G. F. D. 524-A, Ill. C. C. No. 14-A, of the Chicago and Illinois Western Railroad; Supplement No. 14 to Tariff G. F. D. No. 5678-Q, Supplement No. 12 to Ill. C. C. No. 492, and Supplement No. 5 to Tariff G. F. D. No. 12575-K, Supplement No. 3 to Ill. C. C. No. 506, of the Chicago and North-Western Railway Company; Local and Proportional Freight Tariff No. 18-N, Ill. C. C. No. 46, of the Chicago and Western Indiana Railroad Company; Supplement No. 7 to Tariff G. F. O. No. 49, Supplement No. 6 to Ill. C. C. No. 45, of the Chicago, Aurora and Elgin Railroad Company; Supplement No. 17 to Tariff G. F. O. No. 1921-I, Ill. C. C. No. 1277, of the Chicago, Burlington & Quincy Railroad Company; Supplement 15 to Tariff 15-G, Supplement 14 to Ill. C. C. 134, Supplement 20 to Tariff 30-G, Supplement 17 to Ill. C. C. 135, and Supplement 3 to Tariff 12-H, Ill. C. C. 144, of the Chicago Great Western Railroad Company; Tariff Ill. C. C. No. 13 of the Chicago Heights Terminal Transfer Railroad Company; Freight Tariff No. 26-F, Ill. C. C.-C. J. No. 31 and Freight Tariff No. 22-K, Ill. C. C.-C. J. No. 32 of the Chicago Junction Railway, the Chicago River and Indiana Railroad Company, lessee, Supplement No. 23 to Tariff G. F. D. No.

10740-H, Supplement No. 25 to Ill. C. C. No. 236, of the Chicago, Milwaukee and St. Paul Railway Company, H. E. Byram, Mark W. Potter and Edward J. Brundage, Receivers; Tariff No. 59-J, Ill. C. C. No. 72, of The Chicago River and Indiana Railroad Company; Supplement No. 17 to Freight Tariff No. 27474-H, Supplement No. 16 to Ill. C. C. No. 419, and Supplement No. 54 to Freight Tariff No. 21432-J, Supplement No. 46 to Ill. C. C. No. 440, Item No. 296, Freight Tariff No. 21432-K, Ill. C. C. No. 493, of The Chicago, Rock Island and Pacific Railway Company; Supplement No. 1 to Tariff No. 209, Ill. C. C. No. 22, Switching Tariff No. 28, Ill. C. C. No. 29, Joint Freight Tariff No. 207-B, Ill. C. C. No. 31, Joint Commodity Freight Tariff No. 208-C, Ill. C. C. No. 32, Joint Freight Tariff No. 201-G, Ill. C. C. No. 33, and Joint Freight Tariff No. 201-H, Ill. C. C. No. 34, of the Chicago Short Line Railway Company; Supplement No. 10 to Tariff G. F. D. No. 90, Ill. C. C. No. 56, Joint Freight Tariff G. F. D. No. 123, Ill. C. C. No. 88, Joint Freight Tariff No. 124, Ill. C. C. No. 89, and Joint Freight Tariff G. F. D. No. 125, Ill. C. C. No. 90, of the Chicago, West Pullman and Southern Railway Company; Supplement No. 16 to Freight Tariff No. 56-I, Supplement No. 12 to Ill. C. C. No. 434, Supplement No. 15 to Freight Tariff No. 4-D, Supplement No. 10 to Ill. C. C. No. 484, Supplement No. 6 to Freight Tariff No. 15-H, Supplement No. 5 to Ill. C. C. No. 508, and Freight Tariff No. 40-E, Ill. C. C. No. 515, Supplement No. 29 to Freight Tariff No. 46-O, Supplement No. 22 to Ill. C. C. No. 438, and Freight Tariff No. 53-H, Ill. C. C. No. 514, of the Elgin, Joliet and Eastern Railway Company; Supplement No. 20 to Local Freight Tariff No. 452-F, Supplement No. 16 to Ill. C. C. No. 114, of the Erie Railroad Company; Tariff No. 476-A, Ill. C. C. No. 95, and Tariff No. 520-L, Ill. C. C. No. 96, of the Grand Trunk Railway System; Tenth Revised Page 10,

Sixteenth Revised Page 11, Twentieth Revised Page 15, Twelfth Revised Page 19, Twenty-fifth Revised Page 21,

and Eighth Revised Page 21-A, of Tariff No. 1-C, I. P. U. C. No. A-1, Supplement No. 103 to Tariff 13321-F, Supplement No. 96 to Ill. C. C. A-875, Supplement No. 8 to Tariff 5167-T, Supplement No. 6 to Ill. C. C. No. A-973, and Freight Tariff 13321-G, Ill. C. C. No. A-1029, of the Illinois Central Railroad Company, Supplement No. 9 to Tariff G. F. D. No. 77, Ill. C. C. No. 40, Joint Freight Tariff G. F. D. No. 99, Ill. C. C. No. 69, Joint Freight Tariff G. F. D. No. 100, Ill. C. C. No. 70, Joint Freight Tariff G. F. D. No. 101, Ill. C. C. No. 71, and Joint Freight Tariff G. F. D. No. 102, Ill C. C. No. 72, of the Illinois Northern Railway; Tariff G. F. D. No. 385-L, Ill. C. C. No. 228, Tariff G. F. D. No. 325-G, Ill. C. C. No. 229, Tariff G. F. D. No. 407-F, Ill. C. C. No. 230, Tariff G. F. D. No. 231-U, Ill. C. C. No. 231, and Tariff G. F. D. No. 493-A, Ill. C. C. No. 233, of the Indiana Harbor Belt Railroad Company; Local Freight Tariff No. 1-D, Ill. C. C. No. 14, of the Manufacturers' Junction Railway Company; Supplement No. 52 to Tariff G. F. D. No. 9271-K, Supplement No. 31, to Ill. C. C. No. 513, Supplement No. 45 to Tariff G. F. D. No. 9251-H, Supplement No. 26 to Ill. C. C. No. 514, and Supplement No. 1 to Tariff G. F. D. No. 9512-G, Ill. C. C. No. 566, of the Michigan Central Railroad Company; Supplement No. 23 to Freight Tariff No. 225-A (G. F. D. No. 30260), Supplement No. 21 to Ill. C. C. No. 150, of the Minneapolis, St. Paul and Sault Ste. Marie Railway Company; Supplement No. 2 to Tariff Ill. C. C.-L. S. No. C-93, and Supplement No. 18 to Tariff I. P. U. C.-L. S. No. 514, of the New York Central Railroad Company; Tariff G. F. D. No. 26-M, Ill. C. C. No. 113, of the New York, Chicago and St. Louis Railroad Company; Supplement 29 to Tariff Ill. C. C. F-397 and Tariff Ill.

C. C. F-447, of the Pennsylvania Railroad Company; Tariff G. F. D. No. 1-D, Ill. C. C. No. 21, Joint Freight Tariff G. F. D. No. 10-C, Ill. C. C. No. 22, and Joint Freight Tariff G. F D. No 11-B, Ill C. C. No. 23, of the Pullman Railroad Company; Supplement No. 24 to Tariff No. D-7181, Sup-

plement No. 23 to Ill. C. C. No. 593, Tariff No. P-10936, Ill. C. C. No. 743, and Tariff No. E-16505, Ill. C. C. No. 745, of the Wabash Railway Company; Supplement No. 8 to Tariff No. 20-P, Supplement No. 6 to Ill. C. C. No. 33, Tariff No. 21-M, Ill. C. C. No. 37, Freight Tariff No. 10, Ill. C. C. No. 38, Freight Tariff No. 11, Ill. C. C. No. 39, and Tariff No. 23-M, Ill. C. C. No. 40, filed by C. W. Galligan, Agent, and all other tariffs or schedules, not herein specifically designated, in so far as they purpose to establish revised rates effective April 30, 1927, June 1, 1927, and July 8, 1927, and all reissues thereof, applicable to Illinois intrastate traffic, under suspension in Docket 17250, First, Second and Third Supplementals, are hereby required to be permanently cancelled, annulled and set aside on or before November 10, 1931.

It Is Further Ordered that Items Nos. 1 and 3 of Tariff Ill. C. C. No. 185 of The Baltimore and Ohio Chicago Terminal Railroad Company; Item No. 40-B, Supplement No. 22 to Freight Tariff No. 235-A, Ill. C. C. No. 112, and Items Nos. 51-A, 55-A, and 105-A, Supplement No. 19 to Freight Tariff No. 400-A, Ill. C. C. No. 125, of the Chicago and Eastern Illinois Railway Company; Supplement No. 35 to Joint, Local and Proportional Freight Tariff No. 1100-M, Supplement No. 34 to Ill. C. C. No. 734, of the Cleveland, Cincinnati, Chicago and St. Louis Railway Company; Item No. 135-E, Supplement No. 71 to Tariff 383-L, Supplement No. 60 to Ill. C. C. No. A-747, of the Illinois Central Railroad Company; Item No. 45-A, Sup-

plement No. 11 to Tariff Ill. C. C.-L. S. No. 716 of The New York Central Railroad Company; filed to become effective May 5, 1927, and all reissues thereof, applicable to Illinois intrastate traffic, in so far as they propose to advance rates on brick, tile and articles taking same rates, under suspension in Docket 17269, are hereby required to be permanently cancelled, anulled and set aside on or before November 10, 1931.

IT IS FURTHER ORDERED that Docket 17513, complaint of the Illinois Slag and Ballast Company versus the Chicago, West Pullman & Southern Railroad Company, *et al.*, be, and the same is hereby denied, and the cause dismissed and stricken from the docket of the Commission.

By order of the Commission, at Springfield, Illinois, this 26th day of August, 1931.

(Signed) JULIUS JOHNSON,
Secretary.

17250, 17269, 17513

APPENDIX A

Chicago Switching District Defined

Beginning at a point on the shore of Lake Michigan, due north of Clarke Junction, Indiana; thence south to and including Clarke Junction (including freight interchanged between the Indiana Harbor Belt and Wabash at Tolleston, Indiana); thence southwesterly and south just west of the Elgin, Joliet & Eastern to, but not including Ivanhoe, Indiana; thence southwesterly to and including Hessville, Indiana; thence westerly along the north bank of the Little Calumet River to a point just west of Globe, Illinois; thence northwesterly west of the Pennsylvania (Logansport Division) to a point just south of Dolton, Illinois; thence southwesterly to a point just south of Homewood, Illinois; thence northwesterly just west of the Grand Trunk to a point just west of Blue Island, Illinois; thence north and northwesterly just west of the Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt to a point just south and west of McCook, Illinois; thence southwesterly just south of the Chicago & Illinois Western to and including Willow Springs, Illinois; thence northeasterly just north of the Chicago & Illinois Western to a point just west of McCook, Illinois; thence north and northwesterly just west of the Indiana Harbor Belt to a point just south and west of Melrose Park, Illinois; thence west just south of the Chicago and North Western to and including the Proviso transfer yard of that company; thence north to Addison Street; thence east to a point just south and west of Godfrey yard on the Chicago, Milwaukee, St. Paul and

Appendix A (Continued)

Pacific, thence to a point just north of the Chicago, Milwaukee, St. Paul & Pacific; thence east to the line of the Minneapolis, St. Paul & Sault Ste. Marie; thence northerly just west of the Minneapolis, St. Paul & Sault Ste. Marie, to and including Des Plaines, Illinois; thence southeasterly just east of the Chicago and North Western Railway to the city limits of Chicago; thence east just north of the said city limits of the Mayfair cut-off of the Chicago and North Western; thence northeasterly just west of the Chicago and North Western to and including Greenwood Street station; thence southwesterly just east of the Chicago and North Western to the city limits of Chicago; thence east just north of the city limits to the east line of Chicago Avenue or Clark Street; thence northerly on the east line of Chicago Avenue 725 feet; thence east to the east line of Chicago, Milwaukee, St. Paul & Pacific; thence southeasterly to center line of Howard Street; thence easterly on the said center line of Howard Street to the shore of Lake Michigan; thence southerly along the shore line to the point of beginning.

APPENDIX H.

STATE OF INDIANA

PUBLIC SERVICE COMMISSION OF INDIANA

IN THE MATTER *of* The investigation and suspension of rates, charges, regulations and practices by common carriers for the transportation of freight within the Chicago switching district on Indiana Intrastate Traffic.	No. 8939 Approved August 26, 1931

Freight Rates—Chicago Switching District.

Proposed increased schedules found not justified and schedules now under suspension ordered permanently cancelled as of November 10, 1931.

Appearances:

J. N. Davis, J. R. Barse, P. F. Gault, E. A. Smith, D. P. Connell, Guernsey Orcutt, H. I. Allen, H. D. Sheean, and *Nelson Trottman* for railroads serving the Chicago Switching District; *Sherman A. Gillett* for Chicago & Northwestern Ry.; *J. H. Brown* for The Belt Railway Company of Chicago; *M. S. Connelly* for Pennsylvania Railroad; *K. L. Richmond* and *J. F. Connors* for Chicago & Eastern Illinois Railway Company; *T. F. Dooley* for Chicago & Calumet River Railroad Company; *R. C. Davidson* for Chicago, Rock

Island & Pacific Railway Company; *T. E. Bond* for Elgin, Joliet & Eastern Railway Company; *W. G.*

Wagner for Chicago, Burlington & Quincy Railroad Company; *F. C. Furry* for Illinois Central Railroad Company and Chicago & Illinois Western Railroad Company; *Guy A. Gladson* for Receivers, Chicago & Alton Railroad Company; *B. S. Lottenville* for Chicago Heights Terminal Transfer Railroad Company; and *C. W. Galligan* for Illinois Freight Association.

John F. Bonner for Minnesota Railroad & Warehouse Commission; *W. A. Anderson* for Railroad Commission of Wisconsin; *D. L. Kelley* for South Dakota Board of Railroad Commissioners; and *Claude L. Draper* for Public Service Commission, State of Wyoming.

Luther M. Walter for Chicago Shippers Conference Association and Chicago Association of Commerce; *C. E. Hochstedler* for Chicago Association of Commerce; *R. B. Coapstick* for Indiana State Chamber of Commerce; *J. S. Brown* and *H. J. Campbell* and *S. H. Benson*, for Board of Trade for the City of Chicago; *Frank B. Townsend* and *Lee Kuempel* for Minneapolis Traffic Association; *Fred S. Keiser* for Duluth Chamber of Commerce; *J. D. Humphrey* for Hammond Chamber of Commerce, Hammond Manufacturing Association, and others; *H. F. Sundberg* for Chamber of Commerce, Cedar Rapids, Ia.; *R. I. Pierce* for Terre Haute, Chamber of Commerce and Highland Iron & Steel Company; *Howard P. Roe* and *Ernest S. Ballard* for City of Chicago Heights, Ill.; *F. B. McElroy*, *C. B. Cardy* and *R. I. Pierce* for Manufacturers Association of Chicago Heights, Ill.; *L. G. Macomber* for

Detroit Board of Commerce; and *Ralph N. Newmann* for Lions Club of Des Plaines, Ill.

Murray N. Billings for Illinois Steel Company; *Henry C. Keene;* and *Harry C. Ames* for Grasselli Chemical Company; *W. J. Hammond* and *R. R. Flynn* for Inland Steel Company; *W. Y. Wildman* and *R. W. Ropiequet* for Illinois Coal Traffic Bureau; *George Patterson Boyle* for Illinois Slag & Ballast Company; *Walter Hayes* for Sears Roebuck Company; *H. R. Park* for Chicago Live Stock Exchange; *E. S. Gubernator, R. S. Waterbury* and *E. W. Glaesel* for Lehigh Portland Cement Company; *Robert J. McBride* and *Warren Burkhart* for Illinois Lumber & Material Dealers Association, Burgess Battery Company, Beloit Iron Works and Jos. F. Herman Company; *J. D. Forrest* and *G. H. Staat* for By-Products Coke Corporation; *Robert Hula* for Clayton Mark & Company; *W. M. O'Keefe* for Chicago Mercantile Exchange and Live Poultry & Dairy Shippers Association; *Herman Mueller* for St. Paul Association of Public & Business Affairs; *C. B. Cardy* and *W. F. Garman* for Manufacturers Association of Chicago and Stone Producers in Chicago Switching District; *J. W. McRae* for Pennoyer Merchants Transfer Company; *W. F. Coyne* and *W. R. Sanborn* for Lehigh Stone Company; *Quinn Morton* for C. L. Willey Company; *C. A. Shank* for National Brick Company; *W. M. Councill* for National Fireproofing Company; *H. H. Bascom* for Youngstown Sheet & Tube Company; *C. T. Stripp* for National Malleable & Steel Castings Company; *A. R. Miller* and *H. G. Brown* for Illinois Brick Company; *H. W. Robertson* and *H. H. Singer* for Sinclair Refin-

ing Company; *Burton H. Atwood* and *C. B. Ackerman* for Elmhurst-Chicago Stove Company; *J. L. Roberts* and *N. L. Shannon* for The Barrett Company; *Alfred*

S. Knowlton for American Tar Products Company and Chicago By-Product Coke Company; *Adam Bessolo, A. M. Cordell* and *Alfred S. Knowlton* for Standard Steel Car Company and subsidiaries; *T. W. Mackey* for The Western Shade Cloth Company; *Fred C. Rose* for Marsh and Truman Lumber Company; *John D. Ross* for General Chemical Company; *F. D. Porter* for S. Berkenstine Sons, Incorporated; *P. St. Pierre* for A. L. Randall Company and Dure Paper Products Company; *L. E. Whitney* for National Pickle Packers Association; *F. W. Rogers* for Flintkote Company; *M. H. Strothman* for Washburn Crosby Company; *Sam Frier* for Wholesale Sash & Door Association; *E. C. Wilmore* for Sefton Manufacturing Company; *C. D. Miller* for American Maize Products Company; *F. F. Grubbs* for Chapin & Company; *M. S. Allison* for Federal Cement Tile Company; *A. L. Dreher* for Hyman-Michaels Company; *F. M. Garland* and *A. M. Cordell* for Pressed Steel Car Company; *M. D. Perry* for Union Drawn Steel Company, Gary Screw & Bolt Company, and Pittsburgh Screw & Bolt Company; *R. D. Reeds* and *E. F. Pine* for Confectioners Traffic Association and E. J. Brach & Sons; and *A. E. Hueneryoger* for Confectioners Traffic Association and Zion Institutions & Industries; *R. E. Riley* for Chicago Brick Company, Chicago Brick Exchange, Lake Sand Corporation and L. Richard Company; *F. H. Belden* and *E. S. Huebner* for Marblehead Lime Company; *F. D. Wilder* for Chicago Railway Equipment Company; *R.*

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C. Livingston for Interstate Iron & Steel Company; The *F. C. Favor Paper Company* for Chicago Paper Association; *J. H. Kane* for Material Service; *T. P. Scanlon* for J. B. Inderreiden Company and Amber

Furniture Comany; *H. N. Williams* for Jewel Tea Company; *J. T. Dover* and *W. J. Brown* for McClintic-Marshall Construction Company; *E. W. Sieboldt* and *J. R. Van Slyke* for Roxana Petroleum Corporation; *A. E. Sicilia* for Chicago Wool Trade Association; *P. A. McFarlane* for Wisconsin Lime & Cement Company; *H. J. Meilahn* for J. J. Bradenoch Company; *H. F. Obermayer* for Stratton Grain Company and Quincy Elevator Company; *W. J. M. Lahl* for American Seating Company; *A. A. Adams* for Chicago Retail Lumber Dealers' Association and Edward Hines Lumber Company; *H. P. Kahl* for Sprague Warner Company; *Alfred E. Treen* for Illinois Slag & Ballast Company; *W. S. Short* for Seaman Paper Company and H. P. Smith Paper Company; *S. A. Poyer* for Chicago Bridge & Iron Works; *Irwin W. Hart* for Franklin MacVeagh & Company; *F. R. Jerome* for Traffic Bureau of Associated Industries; *L. J. Thomas* for Johns-Manville Corporation; *Arthur W. Fredrickson* for Commonwealth Edison Company; *D. C. Norris* for Wolff Manufacturing Company; *Wm. Lister* for City of Evanston; *W. J. Womer* for Chicago District Ice Association and Lincoln-Boyle Ice Company; *John W. Bingham* for Corn Products Refining Company; *W. J. Rowley* for Albert Dickinson Company; *R. C. Ross* for Jos T. Ryerson & Son; *B. J. Klein* for Southern Cotton Oil Company; *Henry Hauseman* for Pure Oil Company; *J. A. Brogh* for Crane Company; *R. E. Kosmar* for R. F. Conway Company; *J. L. Hodgson* for American

Sand & Gravel Company; *Walter E. McCornack, G. W. Renwich* and *William Forgner* for Chicago Gravel Company and Chicago Stone Co.; *W. H. McReynolds* for Manitowoc Portland Cement Company; *F. S. Hol-*

lands and *H. T. Zaremba* for Standard Oil Company of Indiana; *John J. McGovern* for American Linseed Company and Best Foods Company; *John H. C. Kirk* for Darling & Company; *F. B. McElroy* for Whiteacre Greer Fireproofing Company and American Manganese Steel Company; *Leonard C. Reincke* and *David Dunn* for Wm. Wrigley, Jr. Company; *M. A. Erickson* for Shotwell Manufacturing Company; *Fred Mueller* for Cracker Jack Company; *J. H. Matheson* for The Columbia Mills, Inc.; *H. S. Welton* for Victor Chemical Company; *F. D. Porter* for National Association Waste Materials, Inc.; *B. J. Roggenbuck* for John F. Jelke Company and Geo. P. Brown Company; *B. H. Rubenstein* and *L. A. Boulger* for The Ruberoid Company; *Charles W. Stadell* and *H. D. Pixley* for Carson Pirie Scott & Company; *W. J. Buchanan* for Terminals & Transportation Corporation of Illinois; *Alexander Stuart* for Rosenbaum Grain Corporation; *R. W. Campbell* for Butler Paper Corporation; *F. D. Hassian* for Rathbone, Hair & Ridgway Company and Shavings & Sawdust Corporation; *Charles A. Livingston* for Illinois Manufacturers Association; *W. D. Lindsay* for United States Gypsum Company; *Anton J. Berger* for Construction Materials Company; *James B. O'Rear* for Acme Steel Company; *H. A. Brandon* for Bird & Son, Inc.; *C. C. Tiffany* and *Osborn Van Brunt* for Certain-teed Products Corporation; *J. J. Low* for Briggs & Turivas, Inc.; *R. R.*

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Hargis for Wilson & Company; *Paul E. Blanchard* and *John R. Baker* for Armour & Company; *R. D. Ryndex* and *Wm. N. Strack* for Swift & Company; *J. P. Haynes* and *A. H. Schwietert* for Chicago Association of Commerce; *E. L. Maynard* for Brownell Improve-

ment Company, Dolese Shepard Company, Federal Stone Company; A. C. O'Laughlin Company, Peoples Crushed Stone Company and Superior Crushed Stone Company.

By the Commission:
O. R. Livinghouse, Examiner:

By schedules filed with this Commission to become effective on April 30 1927, and later dates, carriers operating within the Chicago Switching District proposed to make certain increases and changes in the rates, rules and regulations affecting the handling of traffic within that portion of the Chicago Switching District located within Indiana.

By appropriate order approved April 29, 1927, this Commission suspended the operation of such schedules to August 27, 1927. By appropriate order approved August 22, 1927, the schedules were further suspended to February 27, 1928, and a third suspension order was issued under date of February 6, 1928, further suspending the tariffs to July 1, 1928.

The tariffs were further voluntarily suspended by the carriers from time to time, the last suspension being to and including February 1, 1932.

By agreement of all parties this cause was consolidated and heard jointly with the Interstate Commerce Commis-

sion in its Docket 19610, and its I. & S. Docket 2900, together with Docket Numbers 17250, 17269 and 17513 of the Illinois Commerce Commission.

Pursuant to notice as required by law, hearings were held in these consolidated dockets at Chicago, Illinois, on January 11th, May 15, 16, 17, 18, 19, 21 and 22nd, and September 18th, 19th, 20th and 21st, 1928.

ISSUES

The issues involved in this proceeding grew out of a decision of the Interstate Commerce Commission in Docket 15110, *Jones and Laughlin Steel Corporation vs. Baltimore & Ohio Railroad Company*, 96 I.C.C. 682, decided June 15, 1925. The decision of the Interstate Commerce Commission in the aforesaid case prescribed a distance scale of reasonable maximum rates on iron and steel articles, in carloads, from the Pittsburgh Group to the destination territory under consideration, which included certain points in Illinois, and found the rates on the same articles from points in Illinois and Indiana to the same destinations to be unduly preferential. Following the receipt of opinion of the Interstate Commerce Commission in the *Jones & Laughlin Steel Corporation* case, supra, the carriers held conferences among themselves, and jointly with the shippers and receivers of iron and steel articles worked out an adjustment for Illinois territory which was thought to be in harmony with the decision referred to. The rates proposed were filed to become effective April 25, 1926, and the schedules were suspended in I. & S. Docket 2655, *Iron and Steel Between Points in Illinois Committee Territory*. On account of the failure to realign at the same time the rates on iron and steel articles within the Chicago District, hereinafter re-

ferred to as the "District"; and also because of the failure of several of the interested carriers to revise the rates from Gary, Indiana, to points within the District in harmony with the scale in Docket 15110, supra, the suspension order was subsequently vacated except as to the rates from Chicago Heights, Illinois, and Gary, Indiana. Thereupon, at the request of the Interstate Commerce Commission, the car-

riers gave consideration to the realignment of the rates on iron and steel articles between Chicago Heights, Illinois, and Gary, Indiana, on the one hand, and points within the District on the other; and between points within the District. Tariffs were filed to become effective October 20, 1926, naming rates to apply within the District of 3, 5½ and 6½ cents, per hundred pounds, respectively, for one, two and three-or more line hauls, carload minimum 60,000 pounds, with an alternative rate of 8 cents per hundred pounds; minimum 36,000 pounds, applicable to two and three line hauls. These schedules were protested, and the Interstate Commerce Commission, the Public Service Commission of Indiana, and the Illinois Commerce Commission suspended the said schedules. The cases were heard, in part, on February 16, 1927.

In the meantime, numerous conferences were held between the carriers and representatives of the various shippers in the District, with a view to bringing about an adjustment of the rates within the District which would be satisfactory to the shippers and carriers alike.

As the result of these conferences, tariffs were filed effective March 19, 1927, cancelling the schedules under suspention and the proceedings were discontinued and new schedules were filed to become effective April 30, 1927, and on

later dates, naming rates of 3, 3½ and 4 cents to supercede the effective rates of 2½, 2½ and 3 cents respectively, for one-line, two-line, and three or more line hauls, for application within the District, ruch rates to apply not only on iron and steel articles but on commodities generally, except grain, grain screenings, and railway equipment moving on its own wheels, and excepting livestock via the Baltimore and Ohio Chicago Terminal Railroad; and similar rates to

apply on the same commodities, except brick and articles taking the same rates (including common brick), between points within the District on the one hand, and Chicago Heights on the other, and to and from points adjacent to the District, on carload traffic on which Chicago rates apply. The so-called "Compromise Rates" were suspended by the Interstate Commerce Commission in its Docket I. & S. 2900, by the Public Service Commission of Indiana in its Docket 8939, and by the Illinois Commission in its Dockets 17250 and 17269.

The Interstate Commerce Commission, upon its own motion in Docket 19610, in view of the limited record which could be developed under the issues presented in the suspension proceeding, entered upon an inquiry and investigation into and concerning the lawfulness of *all rates and charges* for switching within the District of all carload traffic moving in interstate commerce and the relation of those rates and charges for like switching in intrastate commerce, with the view to prescribing such reasonable, proper, non-discriminatory, non-prejudicial and otherwise lawful switching rates for said traffic, as the facts and circumstances appeared to warrant.

No general investigation of switching rates within the District was instituted by the Illinois Commerce Commis-

sion or the Public Service Commission of Indiana. Their inquiries in this proceeding are confined to the lawfulness of the proposed intrastate rates covered by the tariffs under suspension in the various Indiana and Illinois dockets.

DESCRIPTION OF CHICAGO SWITCHING DISTRICT

The boundaries of the District as defined in Agent Galligan's Tariff, I.R.C. No. 18, are described in Appendix "A" attached hereto and made a part of this order. The District is approximately forty miles in length and from seven to fifteen miles wide, and is densely populated. It covers an area larger than any other switching district in the United States, comprising over six hundred square miles, and is served by thirty-five railroads which maintain a network of more than five thousand miles of track within the boundaries of the District, serving over four thousand private industries. The Manufacturers Association of Chicago Heights urges that the boundaries of the District be extended to include Chicago Heights, a point shown by the record to be approximately 3.7 miles beyond the southern boundary of the District, now generally taking the Chicago District rates. The Chicago and Eastern Illinois Railway Company, which serves Chicago Heights, also contends for the inclusion of this industrial center within the switching limits.

HISTORY OF CHICAGO SWITCHING DISTRICT RATES

Prior to August 1, 1911, the rates, charges and practices of the carriers covering the switching service within the District were in an unsatisfactory, and what has been described as a chaotic condition. Each carrier within the District published its individual switching rate. No joint rates

were in effect. During 1910 a Joint Committee was organized composed of shippers and carriers, with the object of establishing some uniformity in local switching rates. After

many conferences various differences were harmonized and an agreement was entered into which has since been known as the "Lowrey Agreement", which was translated into an "All Commodity" tariff effective August 1, 1911, establishing uniform, individual and joint rates on all commodities except coal, coke and grain. The record shows that the exception on coal and coke has since been removed. The rates in effect prior to the Lowrey Agreement supplied the measure by which the new rates were determined. The all-commodity rates published under the Lowrey Agreement were 1½ cents for one and two-line hauls, and not to exceed ½ cent for each additional line haul, minimum 60,000 pounds. Due to the general increases and reductions in rates since 1911 the present all-commodity rates are 2½ cents for one and two-line hauls, and 3 cents for three-line hauls, as compared with the proposed rates of 3, 3½ and 4 cents, respectively, minimum 60,000 pounds.

The record shows that the carriers generally concede that exceptions should be made to the proposed all-commodity basis of rates, carloads, on such commodities as slag, cinders, quarry strippings, et cetera, which are without commercial value, the accumulation of which at industries is generally regarded as a nuisance and impedes the operation of the plant and can only be disposed of by removal through cooperation of the carriers.

In addition to the foregoing the Chicago and Illinois Western Railroad desires to make an exception of tar products, due, as alleged, to the imminent loss of the traffic if any increase is made in the present rates.

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COST STUDY

Originally, as appears from the foregoing, the carriers endeavored to realign the rates on iron and steel articles

only. The Interstate Commerce Commission thereupon, in its notice of October 25th, 1926, requested that the carriers prepare and submit statistics relating to the shortest, longest and average hauls on iron and steel articles within the District, to be accompanied by detailed cost data. The request was later changed to include all commodities embraced in the 69 classes provided for in the carriers' annual report to the Commission. Pursuant thereto certain statistics were compiled on 42,666 cars moved in September, 1926, while the cost study was prepared for only 26,166 cars.

Fifteen of the carriers operating within and adjacent to the District and between the District and Chicago Heights, Illinois, collaborated in a joint cost study of the switching movements originating and terminating within its boundaries. This study was introduced upon request of the Interstate Commerce Commission without restrictions as to the specific carriers to be included. The study was based upon the Coverston-Saur formula, briefly described hereinafter, and embraced 7 trunk lines, 3 large switching and terminal roads (belt lines), and 5 smaller switching and terminal roads (so-called industrial roads), hereinafter collectively called the study roads, as follows:

Trunk Lines

Chicago, Burlington & Quincy Railroad
Chicago & North Western Railway
Chicago, Milwaukee, St. Paul & Pacific Railroad
Chicago, Rock Island & Pacific Railway
Elgin, Joliet & Eastern Railway

Illinois Central Railroad
Pennsylvania Railroad

Large Switching & Terminal Companies

Baltimore & Ohio Chicago Terminal Railroad
Belt Railway of Chicago
Indiana Harbor Belt Railroad

Small (Industrial) Switching & Terminal Companies

Chicago & Illinois Western Railroad
Chicago Short Line Railway
Chicago, West Pullman & Southern Railroad
Pullman Railroad
Illinois Northern Railway

The study covers carload movements only, and segregates the expenses incurred thereon into three general classes, namely, clerical, switching and car detention or maintenance. Taxes and return on investment are provided for by the use of an estimated ratio, referred to as an operating ratio and used as a divisor to expand the determined costs so as to embrace those elements.

Clerical. This expense represents the cost incurred to prepare records at the point of origin and the point of destination. It embraces the direct expense as well as an apportioned amount of superintendence, maintenance, and general expenses. The total clerical cost at each terminal is reduced to a unit cost per consignment which is assigned to each car moving in or out of the respective terminal.

Switching. This expense represents the cost of all services required in the physical movement of a car, inclusive of an apportioned amount of superintendence, maintenance, traffic, and general expenses. The total switching expense is

reduced to an engine-hour basis and ultimately to the cost per unit of production, the denominator being the number

of cars handled in an hour by an engine while performing a distinctive part of the whole movement. These distinctive parts make up the switching service as a whole and are designated "elements of service." These elements represent switching work such as classification, transfer, interchange and industrial and team track switching. The elements of service embraced in a given route between a shipper and a consignee are combined under an "index number" so as to show the total switching cost for each car. The respective index cost is then assigned to each car moving over the same route.

Car Detention. This expense embraces the maintenance of freight train cars inclusive of an apportioned amount of superintendence, maintenance, and general expenses. The total car detention expense is reduced to the cost per serviceable car day, which is applied to each car for every day that it is in switching service.

Operating Ratio. After having obtained the total operating expense for the traffic under review, provision must be made for taxes and a fair return upon the property used in performing the service. It is suggested that this be accomplished by means of an operating ratio, which is to say that the total costs as determined represents, for example, 67% of the rate or revenue, which should be collected for performing such service. This would allow the difference, or in this illustration 33%, for taxes and profit or return on the investment.

The formula introduced by the carriers used as an illustration an operating ratio of 66.67%.

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The carriers claim that an operating ratio of 67.4% (correct figure should be 69.2 as will be explained later) was necessary for the railroads of the country as a whole to

earn 5.75% upon their investment during the year 1926. However, the carriers herein contend for a ratio lower than 66.67% whereas the shippers contend for a higher ratio.

The test periods within which the unit costs were determined were confined to one week on each of the 15 roads during June, August and October, 1927. The unit costs so determined were then applied to the 26,166 cars previously mentioned which were embraced in the traffic analysis as of September, 1926, and hereinafter referred to as study cars. The foregoing also applies to 638 additional study cars which moved between Chicago Heights and the District during September, 1926.

The following tables prepared from the carriers' exhibits, show the total traffic inclusive of study and nonstudy cars.

Study and Nonstudy Cars
Chicago Switching District

	Interstate		Intrastate				Total	
			Illinois		Indiana			
	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent
One-line Haul—								
Study	7,573	17.75	1,951	4.57	2,426	5.69	11,950	28.01
Nonstudy	595	1.39	7,017	16.45	134	.31	7,746	18.15
Total	8,168	19.14	8,968	21.02	2,560	6.00	19,696	46.16

	Interstate		Intrastate				Total	
			Illinois		Indiana			
	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent
Two-line Haul—								
Study	5,472	12.82	5,853	13.72	158	.37	11,483	26.91
Nonstudy	1,958	4.59	4,257	9.98	11	.03	6,226	14.60
Total	7,430	17.41	10,110	23.70	169	.40	17,709	41.51
Three-line Haul—								
Study	803	1.89	1,930	4.52	.....	....	2,733	6.41
Nonstudy	793	1.85	1,735	4.07	.....	....	2,528	5.92
Total	1,596	3.74	3,665	8.59	.....	....	5,261	12.33
Total (Study)	13,848	32.45	9,734	22.82	2,584	6.06	26,166[1]	61.33
Total (Nonstudy)	3,346	7.84	13,009	30.49	145	.34	16,500[2]	38.67
Grand Total	17,194	40.29	22,743	53.31	2,729	6.40	42,666	100.00

1—15 Study roads.

2—20 Nonstudy roads.

Between Chicago Switching District and Chicago Heights

	Interstate		Intrastate				Total	
			Illinois		Indiana			
	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent
Two-line Haul—								
Study	38	2.94	354	27.41	.....	....	392	30.35
Nonstudy	56	4.33	338	26.16	.....	....	394	30.49
Total	94	7.27	692	53.57	.....	....	786	60.84

	Interstate		Intrastate				Total	
			Illinois		Indiana			
	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent
Three-line Haul—								
Study	135	10.44	87	6.74	.....	....	222	17.18
Nonstudy	79	6.12	156	12.07	.....	....	235	18.19
Total	214	16.56	243	18.81	.....	....	457	35.37
Four-line Haul—								
Study	6	.46	18	1.39	.....	....	24	1.85
Nonstudy	.....	.....	25	1.94	.....	....	25	.94
Total	6	.46	43	3.33	.....	....	49	3.79
Total (Study)	179	13.84	459	35.54	.....	....	638	49.38
Total (Nonstudy)	135	10.45	519	40.17	.....	....	654	50.62
Grand Total	314	24.29	978	75.71	.....	....	1,292	100.00

The average costs, hauls and loading as compiled by the carriers, based upon the study cars and shown in their exhibits are as follows:

Switching Costs Between Points in the Chicago Switching District

	Cars	Average Haul Per Car	Average Loading Per Car	Average Operating Cost		Average Total Cost Based on Operating Ratio 66.67%	
				Per Car	Per 100 lbs.	Per Car	Per 100 lbs.
		(Miles)	(Pounds)		(Cents)		(Cents)
One-line	11,950	13.12	86,250	$15.94	1.8	$23.92	2.8
Two-line	11,483	21.32	84,145	18.92	2.2	28.39	3.4
Three-line	2,733	26.53	85,405	21.52	2.5	32.29	3.8

Switching Cost Between Points in the Chicago and the Chicago Heights Districts

	Cars	Average Haul Per Car	Average Loading Per Car	Average Operating Cost Per Car	Average Operating Cost Per 100 lbs.	Average Total Cost Based on Operating Ratio 66.67% Per Car	Average Total Cost Based on Operating Ratio 66.67% Per 100 lbs.
		(Miles)	(Pounds)		(Cents)		(Cents)
Two-line	392	31.66	75,171	$18.77	2.5	$28.15	3.8
Three-line...	222	33.42	74,416	21.62	2.9	32.42	4.4
Four-line....	24	41.94	84,994	21.57	2.5	32.35	3.8

1—No one-line hauls involved.

After the cost study was submitted into the record the shippers raised many objections to the accuracy of the methods and figures used by the carriers. The carriers also at a later date made additional claims of costs.

The important criticisms of the carriers relate to the following which would tend to increase the determined costs:

1. The studies were made during the summer and fall periods without allowance being made for some of the increased costs incurred during the winter months. This is based upon an alleged check indicating that less cars were handled and more fuel consumed during the months of December, January and February than in any of the other nine months of the respective years, 1925, 1926 and 1927.

2. The cost figures reflect the level of wages in 1927. Later increases granted and pending have not been included.

3. No allowance was included by the trunk-line study roads for the transportation of locomotive fuel over the

respective roads' own lines or by the three large belt lines for distributing coal to their respective fuel stations.

4. No part of the maintenance expense of main tracks to cover their use in the switching service was included in the switching costs.

5. Costs borne by the intermediate and the terminating roads for the return of some empty cars were omitted.

On the other hand the shippers point to other infirmities, both as to the theory and the application of the carriers' formula, of which the following are considered the most important and would tend to lower the costs:

1. On the basis of the serviceable car-day detention, a portion of the maintenance expenses of freight-train cars, or so-called car detention, was allocated to the cost of switching. The shippers' primary objection to this is that the use of the serviceable car-day as a proper basis for this apportionment is erroneous because it comprehends only a time factor, no consideration being given to wear and tear from use as measured by mileage. This criticism is on the ground that repairs, the most important item of maintenance, result principally from damage done when a car is in motion and not while standing still. It is contended that this basis overstates the cost for intra-district traffic and understates the cost for road haul traffic. In this connection the shippers also point out that the responsibility for empty movements as between road and switching services has not been carefully observed, resulting in both over and understatements in the costs, and that it is erroneous to include private cars in the computation of the unit cost per car-day for maintenance, inasmuch as the carriers perform only running repairs on private cars except in case of accident.

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2. Failure to determine distinct engine-hour costs for switching and weighing cars at industries because of the use of lighter engines in those services attended by lower

engine-hour costs and because in most instances that service is performed on tracks owned and maintained by the industries.

3. The determination of unit costs based upon movements during a test period of one week in 1927 on each respective carrier and the application of those unit costs to traffic materially different in volume in another period or during September, 1926, results in an overstatement. The test period should be of longer duration so as to more accurately reflect the normal movement of traffic and the costs so determined should be applied to the traffic moving during the test period instead of another period in which the traffic may not be similar.

4. Failure to reduce the cost by demurrage and weighing charges collected results in an overstatement of the cost as a basis for a distinct transportation rate where, as here, the expenses attached to those services are included in the cost.

5. Throughout the entire proceeding the shippers persistently contended for the inclusion of the Chicago Junction Railroad in the cost study, on the grounds that this road handled a large volume of business, most of which was short haul traffic, and that the omission of such a carrier would unduly increase the cost as indicated by the study roads. The shippers also object to the inclusion of the Elgin, Joliet and Eastern with special reference to the large volume of business included in the study which moves partly outside of the District. For these reasons the ship-

pers contend that the cost study is not representative of the intra-district traffic as a whole.

6. The operating ratio of 66.67 per cent mentioned by the formula is stated to be much too low.

7. Subordination of switch movements to passenger and road freight trains has inflated the cost of intra-district traffic.

8. Many transfer costs include costs of setting out and picking up cars at the beginning or end of the transfer run. Combinations of these transfer costs have been applied on long transfers resulting in overstatement of costs.

9. General criticism was made of the carriers' operating methods and the surrounding conditions as affecting the costs. These relate to circuity of movements, operating methods and restrictions at interchange points, lack of trackage rights to facilitate hauls, and failure to perform joint switching in some instances where two or more carriers serve the same plant.

Representatives of the Illinois Commerce Commission submitted testimony indicating that the costs as compiled by the carriers are overstated due to the inclusion of time prior to the actual assignment of cars to the particular switching movements and also subsequent to their release and the lapse of sufficient time to return cars to a carriers' yard. They also agree with the shippers' contention that the costs should have been reduced by the amount of demurrage collected.

Other less important criticisms were made, but it is not deemed necessary to discuss them in detail.

The following table summarizes and compares the results of the cost study revised to the basis of the respective claims of the carriers and shippers:

	11,950 Cars One-line		11,483 Cars Two-line		2,733 Cars Three-line	
	Carriers	Shippers	Carriers	Shippers	Carriers	Shippers
Operating Exp. (Study)	$190,552	$190,552	$217,317	$217,317	$58,829	$58,829
Net Agreed Undercharge	4,031	4,081	2,468	2,468	414	414
	$194,583	$194,583	$219,785	$219,785	$59,243	$59,243
Disputed Adjustments						
Net Undercharge	4,500		9,787		7,679	
Net Overcharge		35,684		35,510		7,826
Revised Operating Expense	$199,083	$158,899	$229,572	$184,275	$66,922	$51,417
Operating Expenses per 100 lbs.	1.93c	1.54c	2.38c	1.91c	2.87c	2.20c

In the following table we have compared the carriers' original claim of costs (exhibit 7-A) with the present and proposed revenues of the same cars for which costs have been determined.

	Present				Proposed				
	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Costs Expanded by 66.67%
	Cents	Cents	Cents	Per cent	Cents	Cents	Cents	Per cent	Cents
Costs Based on Carriers' Orig. Claims.									
One Line	2.5	2.59	1.85	71.43	3.0	3.00	1.85	61.67	2.77
Two Line	2.5	2.68	2.25	83.96	3.5	3.69	2.25	60.98	3.37
Three Line	3.0	3.58	2.52	70.39	4.0	4.33	2.52	58.20	3.78
Average (weighted)				76.60				60.82	

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Little need be said regarding the foregoing figures except to point out that the carriers have at a later date made

many claims of additional cost. After making adjustment for such claims as could be converted into definite amounts the carriers' claims become as shown in the following statement.

	Present				Proposed				
	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Costs Expanded by 66.67%
	Cents	Cents	Cents	Per cent	Cents	Cents	Cents	Per cent	Cents
Costs Based on Carriers Revised Claims									
One Line	2.5	2.59	1.93	74.52	3.0	3.00	1.93	64.33	2.89
Two Line	2.5	2.68	2.38	88.81	3.5	3.69	2.38	64.50	3.57
Three Line ...	3.0	3.58	2.87	80.17	4.0	4.33	2.87	66.28	4.30
Average (Weighted)...				81.34				64.58	

On the other hand the shippers have presented much evidence of claimed overstatements of cost. The net result of such adjustments claimed by the shippers as could be stated in definite amounts are as follows:

	Present				Proposed				
	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Costs Expanded by 76.80%
	Cents	Cents	Cents	Per cent	Cents	Cents	Cents	Per cent	Cents
Costs Based on Shippers' Claims									
One Line	2.5	2.59	1.54	59.46	3.0	3.00	1.54	51.33	2.01
Two Line	2.5	2.68	1.91	71.27	3.5	3.69	1.91	51.76	2.49
Three Line ...	3.0	3.58	2.20	61.45	4.0	4.33	2.20	50.81	2.86
Average (Weighted)...				64.77				51.42	

A study of the foregoing summaries denotes that there is a wide difference between the costs as claimed by the two contending parties. According to the claims made by the carriers the present rates are much too low and the rates proposed are not much in excess of the proper rates. On the other hand based on the claims of the shippers even the present rates are excessive.

The above differences in results are attributable, in the main, to the disagreement between shippers and carriers as to the theory and the application of the carriers' cost formula relative to the allocation of the maintenance of cars (car detention); the inflation of averages for the study period of September, 1926, by the carriers' application of higher element-of-service costs developed on specific movements of relatively low volume during the test period, limited to one week in 1927, to the same elements of service

performed on similar movements of greater volume during September, 1926, without a compensating movement of

higher volume in the latter period at the lower test period costs developed on other elements of service; the carriers' failure to develop distinct costs for industrial switching, weighing, etc., because of lighter engines employed with less expense than in other switching service; and the variation between the operating ratio of 76.8 per cent proposed by the shippers and the operating ratio of 66.67 per cent suggested by the formula and considered as maximum by the carriers.

AGREED ADJUSTMENTS OF COST DATA

Winter Operations

The principal adjustment on which the carriers and the shippers have agreed is the effect of winter operations. The cost studies were prepared in the summer and fall and it is claimed that costs would be increased in the winter months. The amount of this adjustment was agreed upon by the carriers and shippers and appears reasonable. In our opinion the cost data (Exhibit 7-A) should be adjusted by these amounts (Exhibit 83, p. 4).

Miscellaneous Minor Items

There were a number of minor adjustments claimed by the shippers which were the subject of certain conferences with the result that definite amounts were agreed upon. We have carefully examined the record as to these items and believe them to be reasonably correct. (Exh. 83, pp. 1-3.)

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DISAGREEMENTS

Disparity Between Study and Other Roads

One of the most important criticisms of the shippers is directed toward the question as to whether the cost study,

as conducted on the fifteen participating railroads, is representative of the transportation situation throughout the District. The criticism principally refers to the inclusion of the Elgin, Joliet & Eastern Railway, hereinafterward referred to as the E. J. & E., and the exclusion of the Chicago Junction Railroad.

The E. J. & E. traffic, which is included in the cost study, is composed largely of traffic whose movements are partly inside of the District and partly outside of the District. The record shows that the E. J. & E. is not a party to the Lowrey Tariff, and that many of its rates are on a higher basis.

The Chicago Junction Railroad is one of the largest switching roads in the district, and handles a large volume of short hauls. Many of its rates are below the Lowrey basis. This road operates in the densely built up Stock Yards District and surrounding neighborhood.

Since the present case involves the fixing of rates only within the District and between the District and Chicago Heights, Illinois, it is difficult to understand why the carriers should have included, in determining the costs, a great volume of traffic moving between the District and other points outside of the District, such as Gary, Indiana. It is not proposed that the District be extended to include Gary, Indiana, and neither is there any evidence that any such movements are similar to movements within the District. The record shows that of the 11,950 one line haul cars in the study 7,093 cars were E. J. & E. movements, of which,

6,854 involved movements outside of the District. *Thus over 57% of the one line haul cars used as a basis of determining intra-district switching costs actually moved outside of the district.* Of the total of 11,483 two line haul study cars, 1,264 involved movements on the E. J. & E.; of

the 2,733 three line haul study cars, 730 involved movements on the E. J. & E. The record does not disclose how many of the two and three line E. J. & E. movements are outside of the District.

A comparison of the carriers' original cost study, Exhibit No. 7, which covers the fifteen study railroads, with the carriers' original statistical Exhibit No. 11, which covers the entire traffic on all railroads in the District, shows that the classes of traffic included in the cost study are not, in many case, similar to the classes of traffic excluded from the study. As the Chicago Junction Railroad operates extensively in the Stock Yards District, it is reasonable to presume that the exclusion of the Chicago Junction Railroad from the cost study is largely responsible for the dissimilarity between the group of study cars and the remainder of the traffic; illustrations of this point are: one line haul, fresh meats, no cars in study, 130 cars in other traffic; other Packing House Products, 10 cars in study, 1294 cars in other traffic; agricultural implements, no cars in study, 94 cars in other traffic.

Since the original cost study Exhibit No. 7 did not show the revenues collected on the traffic covered by the cost study, the only comparison of costs and revenues possible, based upon the original showing of the carriers, was a comparison of the cost of the study cars with the revenues of all of the traffic. A study of the makeup of the cost study

traffic, as compared with the total traffic, indicated many important differences, of which the above reference to fresh meats, packing house products and agricultural implements is an illustration. This matter was called to the carriers' attention with the result that they revised both Exhibit No. 7 and Exhibit No. 11, by preparing and introducing into the record Exhibit No. 7-A and Exhibit No. 11-A. The revised

cost study Exhibit No. 7-A not only showed the cost of handling the traffic studied, but also the present and proposed revenues pertaining to that particular traffic.

The carriers' revised statistical Exhibit No. 11-A sets forth the statistics pertaining to the cost study cars separately from the statistics pertaining to the cars not included in the study. The following summary of important characteristics of the study cars, as compared with the cars not studied, was obtained from Exhibits No. 7-A and No. 11-A:

COMPARISON OF PRESENT AND PROPOSED REVENUES PER HUNDRED POUNDS AND AVERAGE DISTANCE HAULED

	Present Rev. per Cwt.		Proposed Rev. per Cwt		Average Car Haul—Miles	
	Study Cars	Other Cars	Study Cars	Other Cars	Study Cars	Other Cars
	Cents	Cents	Cents	Cents		
One Line	2.6	1.3	3.0	1.7	13.12	6.49
Two Line	2.7	2.5	3.7	3.5	21.32	20.76
Three Line	3.6	3.4	4.3	4.1	26.53	25.45

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This tabulation shows that in the case of one line hauls, the cars which were studied for the purpose of determining costs had an average haul of over 13 miles, which was more than twice the average haul of the cars not studied. A similar situation exists in the present revenues per hundred pounds, in that the carriers received 2.6 cents per hundred pounds on the cost study traffic, and exactly half that amount on the other traffic. The rates proposed by the carriers would result in an average revenue of 3c per hundred pounds on the cost study cars, and only 1.7c on the other cars. In this connection it is interesting to note that the carriers' revised claim of cost for study cars indicates a cost of 1.93c per hundred pounds for one line hauls, which

greatly exceeds the revenues which they, themselves proposed to collect on the traffic which was not included in the cost study.

The average car haul and the present and proposed revenues of the two and three line hauls are slightly lower for the other cars than for the study cars, but the difference is not nearly as marked as in the case of single line hauls.

Because of the great difference in the three known characteristics (average haul, present revenues and proposed revenues) of the other cars, as compared with the study cars, it does not appear reasonable that the costs as developed on the study cars should be assumed to represent the cost of handling the other cars.

It, therefore, would be wrong to compare the costs as developed on the study cars with the revenues of all the traffic. If any comparison is to be made, the only proper one would be to compare the costs as ascertained on the study cars with the revenues earned on the same traffic.

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Since the record shows that a large percentage of the E. J. & E. traffic included in the cost study moves across the boundary of the District, either coming into or going out of the District, it would be very desirable to be able to segregate that traffic from the cost study. However, the record does not contain any information enabling us to make that segregation.

The record shows that the tracks of the E. J. & E. which would carry the traffic included in the cost study, lie principally in the State of Indiana, and to a small extent within the State of Illinois. The record also indicates that there are many rates on the E. J. & E. which are in excess of the Lowrey Rate basis. Should this information be used as a basis for a presumption that all interstate and intrastate

Indiana movements on rates over both the present and the proposed Lowrey basis constitute traffic over the E. J & E., we would be assigning to the E. J. & E. 428 one line haul cars, although the record definitely shows that there are 7093 E. J. & E. cars in the study. On the two line hauls this process would assign to the E. J. & E. 1496 cars, although the record shows that there were only 1264 E. J. & E. cars in the study. On the three line hauls this process would assign to the E. J. & E. 1201 cars although the record indicates that only 730 E. J. & E. cars are included in the study. This method, although at first appearing to have some merit, is thus proven to be incorrect, and if used for the purpose of eliminating the effect of the E. J. & E. would result in arbitrary reductions in the indicated revenues of the traffic under review. The record further shows that there are rates in the District which are in excess of the Lowrey basis other than those existing on the E. J. & E. The rec-

ord also shows that many of the cars moving over the E. J. & E. moved on rates, while at present are above the Lowrey basis, would not exceed the proposed Lowrey basis, and thus would not be included in the aforementioned adjustment.

Based upon the present record, it is impossible to exclude the traffic of the E. J. & E.

Car Detention

In the compilation of cost of handling District traffic the carriers have allocated the cost of maintaining freight cars (which includes car repairs, depreciation and retirements, together with certain overhead costs) solely on the basis of time.

They first determined (Exhibit 3) the average cost of maintaining one freight car for one day which amounted

to $0.64352. This was based upon the experience of nine railroads whose operations practically cover the entire United States. This unit cost was then applied to the cars moving in the District on the basis of the number of days each car was assigned to a particular movement.

A great deal of criticism was directed against this method of allocating the cost of maintaining freight cars to the switching service in the District. This criticism was based largely upon the contention that the maintenance of freight cars was related much more closely to the amount of use made of the cars, or the miles traveled, rather than the element of time. For instance, it was stated that freight cars used in comparatively short hauls within the District were in motion only a small part of the total time required to handle the shipments. During most of the time the cars were actually standing still at the shipper's or consignee's places of business or in the railroad yards. On the other

hand, cars used in long distance road haul traffic would be in motion a larger percentage of the total elapsed time.

The shippers have introduced an illustration which they claim is a very conservative calculation, dealing with a car in a single line movement in the District as follows: The record shows that the average loaded haul of single line cars moving in this study was approximately 12 miles. The shippers have added to this an allowance of an equal distance for the empty haul and another equal amount to provide for the shunting of the cars backwards and forwards in classification and other service, making a total distance traveled of 36 miles, claimed to be a conservatively high figure.

The shippers' Exhibit No. 13 contains a computation showing that the average number of car days assigned to

single line cars was 6.6 car days. (A correction of this figure, based upon the carriers' corrected Exhibit 7-A would make it 6.2 car days which, however, will have little effect upon the present computation.) Based upon a total haul of 36 miles per car and the average number of days in service of 6.6 days, the shippers have computed that the cars in switching service move only 5.5 miles per day as compared with almost 30 miles per day for all operations, (or *more* than 30 miles per day if terminal movements are included). The shippers have carried this comparison still further on the basis of the normal average distance of 6 miles covered in one hour by switching locomotives indicating that if the car was in motion throughout the entire day it would have moved 144 miles. These figures indicate that since the cars traveled only 5.5 miles per day they were actually in motion only about 4% of the time and were standing still about 96% of the time.

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Besides the objection to the sole use of the element of time in apportioning car repairs, serious objection was raised to the amount of time which was charged against the cars in the cost study. The shippers have pointed out that many of the cars in their opinion have unreasonably long detention (Exh. 13, p. 45, Exh. 83, p. 118) and that costs have been assigned to many cars in the study which should be charged to prior or subsequent loads.

Accountants for the Illinois Commission have also made extensive studies of the time charged to cars in the cost study. This investigation was completed for 1018 cars and partially completed for 189 cars. This work represented a check of approximately 2200 car terminals. It was found that of the 1018 cars checked completely, 816 cars were in error. The reduction in the amount of time chargeable to these 1018 cars amounted to over 26%. The reduction made

on the 189 cars checked at only *one* terminal amounted to over 16%. Exhibit 96, prepared and introduced by the Illinois Commission accountants, contains the following summary:

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SUMMARY OF TERMINAL DETENTION ON CARS CHECKED

	Cars Checked both for beginning and ending detention				Cars Checked either for beginning or ending detention			
	1 Line Hauls	2 Line Hauls	3 Line Hauls	Total	1 Line Hauls	2 Line Hauls	3 Line Hauls	Total
Total number of cars checked	276	645	97	1018	.....	172	17	189
Number of cars corrected	223	516	77	816	.....	103	13	116
Number of cars Unchanged	53	129	20	202	.....	69	4	73
	(Hrs.)	(Hrs.)	(Hrs.)	(Hrs.)		(Hrs.)	(Hrs.)	(Hrs.)
Cost Study Terminal Detention	71596	196575	29069	297240	.....	52050	4779	56829
Corrected Terminal Detention	54293	142432	21365	218090	.....	43670	3834	47504
Deductions from Cost Study Detention:								
1-Idle Time	10444	22249	4329	37022	.....	7171	882	8053
2—Unusual Delay of Loaded Cars	288	3054	240	3582	.....	144	.....	144
3—Reconsigned (Or Reshipped) Cars	533	753	.....	1286	.....	200	.....	200
4—Private Line Cars	2142	6451	30	8623	.....	.....	.....	.....
5—Return of Empty Cars from Base Yard to Interchange Point	3158	3269	295	6722	.....	92	15	107
6—Cars on Repair Tracks	696	755	72	1523	.....	312	.....	312
7—Miscellaneous Adjustments (clerical errors, etc.)	42	17612	2738	20392	.....	461	48	509
Total Deductions	17303	54143	7704	79150	.....	8380	945	9325

The foregoing table indicates that errors were found in very substantial amounts, being 24% in one line hauls and

27% in both two and three line hauls. The record indicates that Exhibit 96 was carefully prepared after months of painstaking and careful investigation. It is further shown that the Illinois Commission accountants reviewed with the Chicago and North Western Railway Company each and every one of the 269 car terminals checked on that road, with the result that practically no change was made in the figures of that Commission's accountants. This is very significant in view of the fact that the corrections on the Chicago and North Western represent 27.6% of the total correction in time for all cars checked, although the volume of traffic checked on that road represents only 12% of the total checked, measured by car terminals.

The carriers have not contested the accuracy of Exhibit 96. The only rebuttal evidence offered by the carriers was a one page exhibit, No. 98, with the intent of showing that the cars checked by Illinois Commission accountants were not representative of the whole study but included a larger percentage of long detention cars than of cars having short detention.

This Exhibit 98 appears to have lost most of its import because Exhibit 96 states on its face (Comments p. III) that it lays no claim to being representative of the entire group of cars in the study. Nevertheless, Exhibit 96 is conclusive to the effect that many serious errors exist in the amount of time charged against the traffic under review.

Exhibit 96 shows that almost 50 per cent of the errors in time which the carriers have charged against this intra-district switching is due to the inclusion of idle time of cars when they were not in fact assigned to the particular movement to which the time was charged. A great number of empty cars were placed on industry tracks without having

been ordered by the industry. Such cars frequently remained on the industries' tracks for many days before they were actually ordered and brought up to the loading platforms. Important cases of this kind were found at the International Harvester Company, Deering Works on the Chicago and North Western, J. T. Ryerson Company on the Pennsylvania, and Brownell Improvement Company on the Baltimore and Ohio Chicago Terminal Railroad. Other important errors in the inclusion of excess time was found in the case of private line cars where the carriers had included time for such cars while they were standing on the tracks of the owner company, during which time the carriers had no responsibiliy whatever for the said cars. In addition, a great number of clerical errors were discovered which resulted in a very material correction.

The record (Exh. 84, p. 188) clearly denotes that an error of considerable magnitude was made in assigning car detention on certain coke movements on the E. J. & E. The method used by this carrier resulted in charging against the 3,955 cars included in the study the entire available time for the 30 days of the month of September of all of the 922 coke cars that were found to have carried coke during the month. The carrier made no allowance for the time these cars were used to handle 4990 coke movements within the Gary plant of the Illinois Steel Company. No allowance was made for time of car while unserviceable in repair shops or awaiting repairs. This method improperly charges all idle time of said equipment against the traffic included in the study. A calculation presented by the Illinois Commission accountants indicates that the carriers' claim of 7.06 days required for each of these coke movements should be reduced to approximately 3.16 days.

After the carriers had determined the number of days detention chargeable to each car in the study, they applied thereto the average car detention cost per day of $0.64352. This cost was based upon an average for nine trunk line railroads whose operations practically cover the entire United States. It includes the costs of all repairs to the carriers' own equipment, except such damage as was caused by other railroads. It also includes the cost of repairs of damages to equipment of others for which these roads were responsible. The serviceable car days used by the carriers as the divisor include the serviceable days of all equipment on each of these roads regardless of ownership.

The record shows that the belt lines and industrial railroads own only a few freight cars and do very little repair work to freight cars not owned by them. As a result the car repairs costs of such railroads are extremely low as compared with car repairs on trunk line railroads.

These facts form the basis for certain objections on the part of the shippers to the use of the average car detention cost of $0.64352 per day.

The first objection is that this average cost is erroneous because it includes cost of making certain repairs incurred while the cars were in use by the belt and industrial railroads, while the number of serviceable car days used as divisor does not include the time that said cars spent on the lines of the belt and industrial railroads.

The second objection is that the carriers then have applied the average unit cost of $0.64352 to all movements on the belt and industrial railroads.

The third objection is that the unit cost has been applied to private line cars. (This is partly offset by the fact that

the serviceable car days of such private line cars as were on the lines of the trunk line railroads on the dates the cars were counted have been included in the carriers' number of serviceable car days used as a divisor in determining the unit costs.)

These objections appear to be of considerable importance in a case such as the present involving only intra-district switching and covering a territory in which a great number of belt and industrial railroads operate and where it is shown that eight (8) out of the fifteen (15) study railroads were belt or industrial lines.

Pursuing their general contention that time alone is not the proper basis for apportioning car repairs, the shippers have presented certain compilations as to the expense of maintenance of cars applicable to the District traffic on a basis which gives effect to both the element of use or miles traveled as well as the element of time. They have adopted in general a formula which was contained in the American Railway Engineering Association Bulletin for March, 1923, dealing with the question of apportionment of this class of expense. This formula was prepared by a committee of engineers of the American Railway Association.

The following is a brief summary of the shipper's computation of the costs applicable to one line hauls. They first separated the average cost of maintaining one freight car for one day as determined by carriers in their Exhibit No. 3, amounting to 64.352 cents as between the two items of (a) repairs and (b) depreciation and retirements. The overhead accounts were prorated to these two groups. The results were as follows:

Repairs	49.59 cents
Depreciation and retirements	14.75 cents
Total	64.35 cents

It was considered that 65% (Formula basis) of the item of repairs, amounting to 49.59 cents per car day, was attributable to use while the remainder of this item and the entire cost of "Depreciation and Retirement", was attributable to time. This resulted in 32.23 cents being allocated to use and 32.12 cents allocated to time. The shippers then divided the 32.23 cents per car day attributable to use by 30, which is the general average miles per car day during the year 1926, resulting in a cost 1.1 cent per car-mile. From these basic figures the shippers then computed the cost of car maintenance allocable to district traffic as follows:

The record shows that the average loaded haul of all single line cars in intra-district traffic was 12 miles. In order to make adequate allowance for empty hauls and movements in classification and other services the shippers have adopted an average distance haul of 20 miles per car to which they have applied a cost of 1.1 cent per mile, resulting in a cost of 22 cents per car for the element of use. In dealing with the element of time they have used the average detention of 6.6 days per car and applied thereto the cost of 32.12 cents per car day, as determined above, making a total cost applicable to the element of time of $2.11 per car. To the sum of these two items the shippers have added 15 cents per car in single line traffic to cover any additional damage resulting from use on account of loading or unloading or general handling within

the District. This has resulted in a total cost per car handled in single line district traffic of $2.48 which compares with the cost of $3.95 per car claimed by the carriers.

The shippers applied the same formula to two and three line hauls, using the average days detention as computed from carriers' Exhibit 7, and using for two-line hauls an average haul of 40 miles and terminal damage of 30 cents, and for three-line hauls an average haul of 50 miles and terminal damage of 45 cents. In this manner the shippers arrived at an average cost per car for car maintenance of $3.16 for two line hauls and $3.78 for three line hauls as compared with the carriers' cost of $4.88 for two line hauls and $5.66 for three-line hauls. The amount of over-charge claimed by the shippers on this item of car detention is $21,167 for one-line hauls, $19,536 for two-line hauls and $5,005 for three-line hauls.

A careful study of the methods used by the shippers indicates that they did not follow the American Railway Engineering Association formula in all respects and also that they made certain estimates which are not entirely supported in the record.

The record does not contain the facts and figures necessary to make a correct adjustment of either the carriers or the shippers claim of car detention costs.

SEPARATE ENGINE HOUR COSTS

Weighing and Industrial Service

Criticism has been directed at the cost study in respect to the engine-hour figures used by the carriers in determining the costs of weighing and industry switching. The carriers developed engine-hour costs which were applied to all

elements of service. Consideration was given by some of the carriers to differences in the characteristics of certain lines, districts, or operating divisions and separate engine-hour costs were developed for those locations; in applying such costs indiscriminately to the various elements of switching service, it was claimed that the carriers burdened the weighing and industry services with costs that should have been distributed elsewhere.

The carriers do a considerable amount of industry switching on property owned by the industries. Most of the large industries and many of the smaller industries own and maintain the industry tracks located on their properties. In connection with switching work performed by the carriers on the tracks of such industries it is manifestly improper to charge up the expense of maintenance of way and structures and the related general expenses. It is also unfair to add to such expenses a percentage for return on investment. Nevertheless, the method followed by the carriers in applying the same average engine-hour cost against all elements of service does have the effect of assigning improper items of expense and investment against industry switching and weighing in all cases where the industries own and maintain the tracks on their own properties. It has been shown that maintenance of way and structures comprises about 14.7% of the switching costs. It would not be proper, however, to conclude that the industry and weighing costs, incurred by the carriers on the premises of industries owning and maintaining their own tracks, should be reduced by the latter percentage for the reason that, if the carriers were to set up separate engine-hour costs for each class of switching service, expenses eliminated on one class of service would be assessed against another class of

service and in the application of such elements of costs to the intra-district traffic the reduction of industrial costs would be partly offset by an increase in other costs.

It has been shown by the shippers and admitted by the carriers that industrial switching is performed to some extent by lighter engines than those used in other services. The engine-hour costs for industrial and weighing service should be somewhat less due to this factor.

Certain computations have been made by both shippers and carriers to show the effect of setting up separate engine-hour costs for industry switching. No attempt will be made to explain the details of these calculations except to state that various assumptions have been made by both parties which make the results doubtful. The effect on the total switching costs after making a complete redistribution of engine-hour costs ranges from 2 to 4% reduction in the total switching costs. The carriers' computation shows a reduction of 2% which is claimed to be too insignificant to warrant the refinement of methods desired by the shippers. The contention of the carriers that a reduction of 2% in total switching costs does not justify revision of the methods of determining the costs is not well founded for the reason that numerous small adjustments, if not offset, will materially affect the final result. While neither of the calculations appears to be conclusive, the evidence indicates that a reduction in the total costs should be made for these errors.

Transportation of Locomotive Fuel

The carriers claim (Exh. 83, p. 122) that their cost data (Exh. 7-A) is understated by the failure to include cost of transporting locomotive fuel used by the Trunk Lines

where the coal was moved over their own rails. The carriers found that the average cost per engine-hour for locomotive fuel on certain switching roads was $2.42 while on certain Trunk Lines the average was $1.34.

The following table taken from carriers' Exhibit 2, indicates the cost per engine-hour for locomotive fuel on each of the seven Trunk Lines and eight Belt and Industrial Lines:

FUEL COSTS PER ENGINE HOUR

Trunk Lines (7 Roads)		Belt and Industrial Lines (8 Roads)	
C. R. I. & P.	$1.83	I. H. B. (Blue Island Hump)	$1.31
C. & N. W.	1.65	C. W. P. & S.	1.58
C. B. & Q. (Gen'l. Yd.)	1.51	C. S. L.	1.75
C. M. St. P. & P. (Milw. Div.)	1.45	Pullman	1.79
Pa. (55th St.)	1.44	Ill. Nor.	1.90
Pa. (59th St.)	1.44	C. & I. W.	2.25
C. M. St. P. & P. (Chicago Ter.)	1.22	I. H. B. (Other)	2.41
I. C. (Markham)	1.20	B. R. C.	2.47
I. C. (Chicago Station)	1.20	B. & O. C. T.	3.12
Pa. (Colehour)	1.20	I. H. B. (Gibson Hump)	3.23
E. J. & E.	.97		
C. B. & Q. (Other Sw. Dist.)	.64		
Av. as computed by carriers	$1.34		$2.42

The difference between the above averages computed by the carriers of $1.08 per engine-hour was assumed to represent freight charges paid by the switching roads.

If the carriers are correct in stating that the difference in cost of fuel per engine-hour represents transportation costs, it is exceedingly difficult to account for the great variations in these costs as shown by the above table.

For example, the fuel cost per engine-hour on the Chicago and North Western Railway Company is $1.65 while

for the Illinois Central Railroad Company it is $1.20, although both roads are Trunk Lines, and both have lines

into the coal fields. It is also impossible to account for the enormous difference between the fuel cost per engine-hour of $.64 on the Chicago, Burlington and Quincy Railroad Company and $1.83 on the Chicago, Rock Island and Pacific Railway Company. Likewise in the group of Belt and Industrial Lines we find a variation between the maximum and minimum cost of $3.23 and $1.31 respectively, although in each case transportation costs are supposed to be included. It is also surprising to notice that these maximum and minimum unit costs were determined by the same railroad, the Indiana Harbor Belt Railroad Company, the maximum being at their Gibson Hump Yard and the minimum at their Blue Island Hump Yard. A further disturbing factor is indicated by the fact that the fuel costs per engine-hour of five out of seven Trunk Lines (the first six items in above table), which are supposed to exclude transportation costs, are in excess of the Indiana Harbor Belt Railroad Company's Blue Island Hump unit cost which is supposed to include transportation cost.

The above facts furnish a clue indicating that there must be other factors besides the cost of transportation of locomotive fuel which affect the final unit cost of fuel per engine-hour. We have given this matter some study, and have concluded that there are many important factors which have a bearing on the final unit cost of the fuel per engine-hour.

A few of these factors are as follows:

1. Basic cost of fuel.
2. Cost of handling.

3. Heating values of various kinds of coal.
4. Quantities consumed by various types of engines.
5. Amount of non-productive engine time as related to net engine hours.

While there is no question that the Trunk Line Railroads are entitled to include as costs of the switching business the expense of transporting fuel over their own lines from the point of purchase to the District, they have utterly failed to make any proof as to the correct amount to be allowed. Fanciful calculations, such as those presented, are without meaning or value.

ABNORMAL COSTS—ONE WEEK TEST PERIOD

The shippers claim that the costs are overstated by reason of the fact that the unit costs developed in the test periods in the year 1927 were applied to the traffic moving in the month of September, 1926, in which latter period the volume of traffic of many industries differed materially from that of the test periods. It is claimed that many high unit costs resulting from small volume in the test period were applied to large volumes in September, 1926, and that this effect is not offset by the low unit costs.

In support of this contention the shippers have cited many instances (Exh. 83, pp. 25, 26, 27, 28, 29, 45, 49 and 146) where high element costs resulting from low volume in the test period were applied to large volumes in September, 1926. An illustration of the shippers' criticism is that of Pennsylvania Railroad Element No. 350, industrial switching at Albert Schwill & Co. During the test period of one week in October, 1927, four loaded cars were switched at this industry, producing an average cost of $15.83 per car,

(see note a) which cost was applied to 85 intra-district cars moving in the month of September, 1926. This is an example of the development of a high cost based upon low volume in the test period which was applied to a large volume in another period.

In addition to the illustrations cited above the shippers have made a computation (Exh. 83, p. 175) showing that the application of costs developed in the test periods to traffic of different volumes in September, 1926, resulted in a much higher average study cost of industry and team track switching than the corresponding average for the weekly study periods. The amount of these excesses are $.85 for single line hauls, $.60 for two line hauls and $.33 for three line hauls. Based on these figures the shippers conclude that the carriers' costs are overstated by the following amounts:

1 line hauls	$10,165.15
2 line hauls	6,895.20
3 line hauls	902.55

The carriers reply (Exh. 83, p. 176) to this criticism by stating that any increase in the cost by application of high unit costs is offset by a reduction from the use of many abnormally low unit costs. They also cite the average switching costs developed in the cost study as evidence of efficient operation, the inference being that these costs are reasonable for this traffic.

Note (a) This cost compares with the average for the Colehour district (in which this industry is located) on the Pennsylvania Railroad of $1.89 per car.

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It is extremely difficult to determine from the record the effect of this matter upon the costs developed in the study. The carriers' claim that high costs are offset by the low costs has some merit; however, it would take a great number of shipments at a cost *slightly* below normal to offset a few shipments at costs *much* above normal. This would necessitate a much greater volume of business in September, 1926, than during study periods, which condition is not shown by the evidence.

The carriers' method of developing costs in one period of such short duration and applying them to traffic moving in another period is so confusing and unsatisfactory that serious doubt must arise as to the accuracy of the final results.

DEMURRAGE AND WEIGHING REVENUES

In stating the revenues involved in this proceeding the carriers have included nothing for demurrage or weighing although the expenses developed by the carriers include the expenses relating to those services. The record does not contain sufficient evidence to determine the amount of such revenues pertaining to the intra-district movements or the amount of expenses in respect of such revenues. A check of the demurrage records for 1112 cars, moving during September, 1926, in intra-district traffic, was made by representatives of the Illinois Commission. A tabulation of the results of this investigation showed actual collections of at least $1.88 per car. While the latter figure cannot be considered to be representative of all the cars in the study, it does clearly indicate that demurrage is an item of revenue for intra-district business and should not have been omitted

by the carriers. The explanation given by the carriers in connection with this item, as also with several other items, that the adjustments were not made, because of their insignificant character is futile when it is considered that the cost study has been made up through a collection of a multitude of small amounts.

SUBORDINATION OF SWITCH MOVEMENTS

The evidence shows that there are numerous grade crossings in the District, particularly on the Belt Lines, and that the established operating practice of the carriers is to hold

switching traffic at such crossings for passenger and road freight trains to pass. An example is cited by the shippers (Exh. 13, p. 41) of the run of the Indiana Harbor Belt Railroad from its Lake Front yard to its Michigan Avenue yard, a distance of 1.7 miles, requiring simultaneous clearance over five Trunk Line roads which takes from 15 minutes to three hours with an average of 50 minutes. (See also Exh. 83, p. 42.)

The carriers admit that the switch runs are subordinated to passenger and road haul movements but insist that the delays are properly chargeable to the switching business (Exh. 83, p. 180). Since time is the basis of the cost study, whatever delays occurred during the test periods of 1927 were charged against the elements of transfer and interchange service developed during the test periods. These were later applied to the movements of switching district cars in September, 1926.

It is apparent that while the operating practice may be entirely justified in the interest of rapid passenger and road freight service, all time incidental to delays at crossings should not be charged against the adjunct service of

switching. There must be an equitable distribution of the time between the services benefited. It is apparent that with the complicated network of roads existing within the District, the delays incident to grade crossings must be considerable. The evidence is clear that an overcharge has resulted from the practice of the carriers in subordinating switching movements to through freight and passenger service, but the record does not disclose the extent thereof.

ERRORS IN TRANSFER COSTS

In the carriers determination of the unit costs of transfer movements, certain errors have been made. During the test period yard conductors made up work reports, classifying the work done by their trains during each assignment period. On these reports, designated as Form CS-1, the yard conductors showed the time devoted to each switching operation such as transfer and interchange movements. When these reports were tabulated, the number of cars handled per hour in each element or type of service was computed and the cost per engine hour was divided by the number of cars to determine the average cost per car for each particular operation.

The record (see Exh. 84, pp. 193, 204 and 209) shows numerous illustrations of consecutive transfer movements made by the same train in which there is no lapse of time between transfer, but the composition of the train in the different transfer had changed. It is apparent that the number of cars in a train cannot change without some time being required to pick up or set out the cars. All of the time in the instances cited has been charged to the element of transfer switching. The carriers have attempted to justify their *cost methods* on the ground that the *operating*

practice was in the interest of efficient operation. This explanation fails to show why proper apportionments of cost were not made between transfer and classification (or other) service. The final costs are distorted through the application of the incorrect element costs, but the exact effect cannot be ascertained from the record.

NO ALLOWANCE IN COST STUDY FOR INCREASES IN WAGE RATES SINCE 1926

The carriers' claim that the costs submitted are understated somewhat, due to certain increases in wage rates since the year 1926. While the carriers state that there have been increases ranging from 3 to 8% in the payrolls of the groups of employees involved, no evidence has been submitted to show to what extent these classes of employees have engaged in work relating to the District business, nor has evidence been submitted to show whether the increased wage rates have resulted in increased efficiency.

OMISSION OF SWITCH TRAFFIC PROPORTION OF COST OF MAINTAINING MAIN TRACKS ON TRUNK LINE RAILROADS

The costs submitted by the Carriers contain nothing for the switching traffic's proportion of maintaining main tracks on trunk line railroads. The formula used in preparing the costs makes no provision for this expense probably because of the difficulty in making an equitable distribution between the various classes of traffic. While the main tracks are used principally by the traffic other than the traffic under review, it is nevertheless true that the switching business should bear some portion of the cost of maintenance and that the cost study is understated thereby.

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OPERATING RATIO

All rates for service whether transportation or other service, generally should be sufficient to pay operating expenses and taxes and yield a fair return upon the fair value of the property used in performing the service. We have already discussed the evidence of cost of the service and

come now to the provision for taxes and return on investment.

No evidence was offered as to the portion of the carriers' property which is used in performing intra-district service or the value thereof. Neither was any evidence offered as to the amount of taxes chargeable to this traffic. Instead the carriers offered certain evidence as to the ratio (operating ratio) which in their opinion operating expenses should bear to the entire revenues; the difference between that per cent and 100 per cent representing the amount claimed for taxes and return.

The carriers' formula contains a figure of 66.67% representing operating ratio. This is simply a figure used to demonstrate the application of the formula and does not have any weight in determining the proper operating ratio applicable in a particular case.

The principal evidence of the carriers consists of data for the railroads of the country as a whole for the year 1926, indicating an operating ratio of 73.2% with a return of 4.4% on the investment. The carriers then attempted to show what operating ratio would have produced a return of 5.75%. This they claim to be 67.4%.

In this computation they seem to have made a very simple mistake in that they have assumed that whatever was added to the amount required for return would be deducted

from operating expenses. Other than this computation there is no indication that the carriers are willing to cut operating expenses on the traffic under review in order to produce a larger net income. Their computation should have been on the basis of increasing the revenues to provide the necessary return. On this basis expenses would remain at 73.2 cents for each original dollar of revenue but the

remainder of 26.8 cents would be increased to 32.6 cents making a new total revenue of $1.058. Of this revised revenue the operating expenses represented 69.2%. This is the true operating ratio developed from the carriers' figures for the country as a whole.

The carriers are not willing to accept the average operating ratio for the entire country, but claim that for the District an operating ratio of less than 66.67% should be used, the reason being given that with a greater investment per mile of road within the terminal limits a greater proportion of the revenues are required for taxes and return on the investment.

There is no question but that the investment per mile of road in the terminal territory of Chicago greatly exceeds the investment per mile of road outside of the terminal. However, the record is not clear as to what proportion of such investment may be properly allocated to the intra-district switching business. There is also the important question of whether the volume of traffic is also greater in proportion to the increased investment per mile of road.

The shippers have attempted to show by a comparison of operating expenses per mile that the traffic is much heavier in the terminal as compared with railroad operations generally. If duplicate mileage due to trackage

rights could be eliminated the computation would show still greater density.

The carriers object to the use of operating expenses as a test of volume of traffic and have made some estimates of car miles within the district comparing them with the car miles of the first operating division outside of the District. No evidence has been introduced as to the proper or actual operating ratio for the operating divisions adjoining the

District. Such operating divisions no doubt move a much greater volume of traffic per mile of road than the roads as a whole. Because of the unquestionable high traffic density of the operating divisions immediately adjoining the City of Chicago, a comparison, such as made by the carriers, would be unduly favorable to themselves. Since they are attempting to justify the use of an operating ratio determined from a study of the railroad operations in the country as a whole, their comparisons should have been between the District and the country as a whole, which, no doubt, would show a much greater difference in volume of traffic than was shown by the carriers' comparison with the adjoining operating division.

On the other hand the shippers' comparison of volume of traffic based on operating expenses per mile seems to have some value. Thus the monetary unit of the dollar is the basis of comparison. The carriers compare property values also on the basis of dollars invested. The carriers have based their evidence of the fair operating ratio upon computations of values, expenses and net incomes for the country as a whole in terms of the dollar. The amount required for a fair return and taxes will ultimately be in dollars. The ratio used to compute the provision for taxes and return will be applied to the particular operating ex-

penses of the District expressed in dollars. The fact that those expenses are *great* (as shown infra) will have a very definite result in *increasing* the amount provided for the fair return and taxes when the ratio is applied thereto. Therefore, in our opinion, operating expenses represent a reasonable index of the density of traffic.

It is contended that the intra-district switching business is more costly than other business due to the shipments

originating and also terminating at industries within the district which are said to involve higher industrial switching costs than at points outside of the District. The record also shows that the tracks in the District were not laid out to take care of this business which fact tends to create more costly operations. On the supposition that this business is more costly, an operating ratio higher than the average could be applied because the higher the operating expenses, the higher the operating ratio required to earn a fair return on the same value.

The record also indicates that a considerable portion of the industry tracks in the District are owned by the shippers on which the carriers are not entitled to any provision for taxes and return. This appears to be a matter of great importance, but unfortunately the record is not clear as to what proportion of the industry tracks are owned by the shippers. The application of an operating ratio, without ascertaining and giving proper effect to this matter would work serious injustice to the shippers.

The record also contains evidence as to operating ratios used in certain other switching cases. These ranged from 77.2% to 86.6%.

Other evidence was introduced by the shippers indicating that nine of the principal switching roads in the Chicago

territory would earn an average of 5.75% on their investment if their operating ratio was 72.2%. The record also shows that on the basis of the Interstate Commerce Commission's tentative valuation these same nine carriers would earn 5.75% if the operating ratio was 76.8%. The shippers contend that no operating ratio lower than 76.8% should be used.

A comparison of the details in Shippers' Exhibit 13 indicates that 48% of the "Switching Cost" in the study was incurred on railroads included among the nine carriers whose operations indicated an average operating ratio in excess of 76%. If the E. J. & E. is excluded from this computation the results indicate that 68% of the "Switching Cost" in the study was incurred on railroads included among the aforementioned nine carriers. It is also shown that eight out of the nine carriers used by the shippers in the study of operating ratios were included in the cost study.

While these nine switching roads handle a considerable volume of business other than intra-district switching, it has also been shown that they handled the major portion of intra-district traffic in the study. The shippers' evidence concerning these roads has the value of being closely related to the District, and to the traffic in question.

The process of determining the proper rate or revenues to be collected by having only one known quantity, namely, the operating expense, and applying thereto a percentage or operating ratio, which, in itself, is a very uncertain quantity, is a very unsatisfactory and haphazard method. The correct and complete proof which the carriers should have presented in this case would include proof of the fair value of the property used and useful in handling the Dis-

trict business, proof of a fair rate of return which they should earn on the said property, proof of taxes actually paid on said property and proof of the proper operating expenses in connection with said business. We recognize that the preparation of such proof would entail considerable work on the part of the carriers; however, we do not believe that fact is an adequate reason to justify the car-

riers in presenting only testimony as to an operating ratio, based upon operations in the country as a whole, involving not only this territory but other locations where conditions are very different, and including not only freight, but passenger, mail, express and all other classes of railway operations.

COMMODITIES

Evidence was submitted by various parties interested in the transportation of particular commodities, with the purpose of securing a continuation of present rates on those commodities. Some of the contentions advanced in connection with a number of the commodities moving in large volume, are hereinafter set forth:

Grain: At present wheat, corn, oats and other grains move in large part within the District on exceptions under the Lowrey basis, and it is proposed by the carriers to place grain generally upon the Lowrey basis, such proposal growing out of the general investigation of switching rates instituted by the Interstate Commerce Commission under its Docket 19610. The tariffs under suspension by this Commission do not propose to place the rates on grain and grain products on the Lowrey basis, but are under consideration here solely because of the general investigation ordered by the Interstate Commerce Commission.

It appears from the evidence that based upon the traffic analysis of September 1926, the principal grain movement consists of corn in two-line hauls, both interstate and intrastate in Illinois, although there is a substantial intra-district movement of all grains, in one, two and three-line hauls. This greater movement of corn may be attributed to the extensive manufacture of corn products within the

District, and to the facilities for drying wet corn for market with which the District is said to be especially equipped.

The testimony of the shippers generally concerned the manner of merchandising grain, total amount of available grain, and storage facilities around Chicago, the amount of grain in storage at various dates, and the so-called reciprocal and proportional switching charges on inbound and outbound movements at Chicago, compared with similar charges in various other switching districts such as St. Louis, Missouri; Minneapolis, Minnesota; Kansas City, Missouri, and Omaha, Nebraska. This evidence clearly indicates the importance of Chicago as a primary grain market. The carriers contend that charges per car in other switching districts, brought into comparison by the shippers, are either so-called "reciprocal" switching charges which are not in issue, or proportional charges which are incomplete unless combined with other charges of that class to make the through cross-town charge; and that the shippers' comparison is unaccompanied by any showing of similarity of conditions.

The principal witness for the grain interests urged that the charges for the intra-district switching of grain within the District should be absorbed by the carriers—at least to the extent of one intra-district switching service. The evidence does not show that the line-haul rates are adequate

to compensate the carriers for the additional switching service performed in the district; nor does it show that the intra-district movement should be considered in the light of transit arrangements or so-called "reciprocal" switching as suggested by the shippers' witness. They constitute distinct services and justify distinct charges when rendered.

The extent of the cross-town switching of grain, including the intra-plant movement, was shown to be as follows:

In 1921	20,851 cars.
In 1922	14,745 cars
In 1923	14,586 cars
In 1924	19,672 cars
In 1925	25,891 cars
In 1926	26,865 cars
In 1927	18,655 cars

The record shows that grain generally loads much heavier than the 60,000-pound minimum usually exacted on shipments in the District. It is contended that the present rates on grain which have always been less than the Lowrey basis in the District, are related to the entire line-haul grain rate structure and the competition with other grain markets and milling points, and that the present rates, if not absorbed, should be permitted to remain in effect.

Coke:

The coke interests were represented solely by the By-Products Coke Corporation of Chicago, with plant located at South Chicago, Illinois, which claims to be the largest producer of coke for the general market in the United States. This company carbonizes 1,500,000 tons of coal each year, and produces 1,250,000 tons of coke. In addition it owns and operates a blast furnace in South Chicago. Yard

tracks and scales are owned and maintained by the industry at its coke plant. The Chicago Short Line performs the switching at that point.

During the year 1926 the coke plant shipped 28,816 carloads of coke, light oil, ammoniacal liquor, and coal tar, of which 26,948 carloads were coke. The coke was distributed

as follows: 5,050 carloads in one-line hauls less than one mile in length; 12,099 in two-line hauls and 9,799 in three-line hauls. The one-line hauls were made in private cars for which no allowance is made. Of the two-line hauls 6,120 cars were destined to points outside of the District. The carriers submitted traffic statistics for the month of September, 1926, only, but measured by that month there must be a considerable movement of coke in addition to that of the By-Products Corporation. The carriers show for that month a total movement of 6,716 cars. While the shipper herein named estimates that ninety per cent of its coke moves in Illinois intrastate traffic, the carriers' statistics show that about fifty-eight per cent of the total movement of coke in the District is interstate. The carriers' statistics for September 1926, show that the distance of one-line hauls ranges from 1.3 to 11.97 miles; two-line hauls 2 to 56.9 miles; and three-line hauls 8.5 to 37.4 miles. The following shows the average distances of those hauls and the weighted average revenue at present and proposed Lowrey basis of rates:

Interstate				Illinois				Indiana			
Cars	Average Distance	Revenue Per Ton		Cars	Average Distance	Revenue Per Ton		Cars	Average Distance	Revenue Per Ton	
		Present	Proposed			Present	Proposed			Present	Proposed
	(miles)	(cents)	(cents		(miles)	(cents)	(cents)		(miles)	(cents)	(cents
					One-Line						
3	(1) 7.0	50	60	55	3.95	50	60	....	.....	....	....
3374	(1) 11.97	60	60	.....	.....	.....	.....	548	(1) 11.97	60	60
37	(1) 11.97	12	12	478	5.94	40	40	....	.....	....	....
					Two-Line						
138	23.84	50	70	1239	7.30	50	70	....	.....	....	....
12	46.82	73	87	14	12.79	71	88	....	.....	....	....
277	(1) 12.70	45	45	.....	.....	.....	.....	....	.....	....	....
					Three-Line						
....	.....	....	....	410	25.95	60	80	....	.....	....	....
....	.....	....	....	78	28.24	76	92	....	.....	....	....
....	.....	....	....	53	10.29	50	71	....	.....	....	....
3841				2327				548			

(1) Actual Distance as shown in Exhibit 11-A.

Indiana Distances apparently in error. E. J. & E. mileage tariff I. R. C. 565 shows fr Gary to Stockton distance of 3.89 miles (See Exhibit 84, Page 188).

Evidently the heaviest movement is in one-line interstate hauls at the rate of 60 cents per ton for a haul of 11.97 miles, which is ten cents over the present Lowrey basis. No increase is proposed in that rate. There is a substantial one-line movement in Indiana and a heavy three-line movement in Illinois. The Indiana one-line movement is on a rate ten cents per ton above the present Lowrey basis. This leaves a substantial tonnage now moving on rates less than the present Lowrey basis with respect to which no change is proposed, together with a somewhat smaller tonnage which now moves on rates considerably over the present Lowrey basis, respecting which an increase is proposed. Doubtless some of the latter tonnage moves over the E. J. & E. and some deliveries by the Chicago and North Western

Railway and Chicago, Milwaukee, St. Paul and Pacific Railroad in the so-called outer district, for which an arbitrary of one-half cent per hundred pounds is added to the Lowrey rate.

The By-Products Coke Corporation subscribes to a uniform basis of rates, provided no increase is made in the present rates, admitting that an additional charge for the use of team-tracks would be justified. The testimony in protest of higher rates refers to an increase of approximately $170,000 per annum in its transportation charges on coke alone; to the use of private cars in the one-line hauls for which no allowance is received; and to certain elements of service contained in the carriers' costs which the shippers claim should be eliminated. The movement in private cars is Illinois intrastate and at rates which are ten cents per ton under the Lowrey basis.

A witness for the By-Products Coke Corporation testified that a large portion of the cars which they send out under load, whether for line haul or switching movement, are cars which have previously come into the plant under load.

Sand, Gravel and Crushed Stone

These commodities are almost invariably classed together for rate-making purposes. The producers of crushed stone assert that gravel is produced and shipped largely from nearby points outside of the District which are located on trunk-lines able to make local delivery and that the points of production of crushed stone within the District are located on switching roads which require a connecting-line delivery. It is shown that gravel now moves from nearby points outside of the District on single-line rates of 65 cents per ton, while the crushed stone re-

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ferred to moves within the District on two-line switching rates of 50 cents per ton, which under the proposed adjustment would be increased to 70 cents per ton, resulting in a spread of five cents over the gravel rates.

A witness for the crushed stone producers stated that the cost to produce a ton of stone is two to three and a half times greater than the cost to produce a ton of gravel. Exhibits 40 and 41 introduced in evidence indicate that the average per-car weight of crushed stone within the District for the years 1925 and 1926 was 53.74 and 53.47 tons respectively. Other exhibits of record indicate that the preponderance of the movement of crushed stone is Illinois Intrastate movement.

The producers of crushed stone within the District are in accord with the general plan of a uniform rate basis and are not in favor of a zoning plan, due, as alleged, to the discrimination that generally results therefrom. It is suggested, however, that if there is any change to be made in the present rates on crushed stone, the following basis be adopted:

Weight (pounds)	One-Line (per car)	Two-Line (per car)	Three-Line (per car)
60,000	$12	$15	$18
80,000	16	20	24
100,000	20	25	30

The adoption of the foregoing suggestions would be a departure from either the present or proposed Lowrey basis. It would result in a decrease in the present one-line charge and decreases in all charges under the proposed basis.

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Some general statements were made by the interested shippers of these commodities showing the availability of

present and potential transportation by water within the District, in competition with transportation by rail, and the stimulation of delivery by motor trucks in the event of an increase in the rail rates.

The producers of sand which is brought into the District for distribution, submitted testimony of a character somewhat similar to that submitted by the producers of crushed stone.

Lumber

The Chicago Retail Lumber Dealers' Association representing 135 lumber yards out of a total number of approximately 258 in the District, submitted testimony to the effect that the present rates and a uniform rate basis are satisfactory to its members. Lumber generally moves on the Lowrey basis, and under the tariffs filed in this proceeding it is proposed to increase the rates to 3, 3½ and 4 cents per hundred pounds, respectively, for one, two and three-line hauls. These shippers urge that the present rates be retained and state that from 4000 to 5000 car-loads of lumber, per year, are switched within the District, but that 80 per cent of the entire lumber movement is by truck. It is contended that a still larger tonnage will move by truck if the present rates are increased. It is also contended that a substantial number of carload shipments of lumber does not load to the minimum weight of 60,000 pounds, which has the effect of increasing the actual freight cost per hundred pounds.

Corn Products

This testimony was presented by the Corn Products Refining Company of Argo, Illinois, and the American Maize

Products Company of Roby, Indiana, both located within the District. The principal products of corn are starch, syrup, sugar, oil, gluten feed and meal. The Corn Products Refining Company owns and maintains seventeen miles of track, representing an investment of $630,000, and the American Maize Products Company three miles of track, representing an investment of $120,000 within their respective plant enclosures. These facilities are used both for line-haul and intra-district switching operations, with the former predominating. In opposition to any increase in the rates these producers show that the greater part of their shipments within the District weigh less than the minimum of 60,000 pounds, which results in the payment of average freight charges from six to nine miles per hundred in excess of the rates now in effect. This is not due to the inability of observing the minimum in physical loading, but is done to meet the competition resulting from the lower minima of 36,000 and 40,000 pounds, applicable in connection with the road haul movements.

These producers contend that transit rates should be published on corn in, and the products out, destined to points in the District, with provision for the absorption of switching charges. They assert that switching charges are absorbed at St. Louis, Missouri, and East St. Louis, Illinois, on the products of corn milled at these points, and on sugar out of storage at Chicago for delivery in the District, and which originates on the Chicago and North Western Railway Co. and connections west of the Mississippi River. Comparisons were also made of the switching charges at Chicago with the charges within other switching districts such as Buffalo, New York; Detroit, Michigan; Cincinnati, Ohio, and Boston, Massachusetts, but no showing was made

of comparative conditions which is required in order to make the comparisons of value. These shippers contend that lower rates should prevail in the District because of the greater density of switching traffic. In a large measure, the testimony involved transit privileges and line-haul rates alleged to be prejudicial to Chicago and preferential to other remote points.

Tar Products

This item embraces roofing and paving tar, paving pitch and some creosote oils. The products move almost entirely in private tank cars, for which no allowance is made. The record indicates that the tar products generally move on the full Lowrey basis. The Chicago & Illinois Western Railroad Company publishes a one-line rate of $9.00 per car for the comparatively short haul applicable on Illinois Intrastate traffic. It handles five or six cars a day on that rate. That carrier is desirous of continuing the rate of $9.00 rather than be deprived of the business which, it was testified, would be diverted to water transportation if the rate is increased.

The use of private tank cars for the transportation of tar products which results in the elimination of per diem charges and costs to carriers for maintenance of equipment and other costs incidental to ownership, was especially stressed. Comparison was made of the average earnings of $22.50 on certain loaded tank-cars of coal tar with the approximate cost of $11 for handling the car in a three-line movement. It does not appear, however, that the cost for the empty movement was considered and ordinarily the use of private tank cars for particular commodities exclusively involves 100 per cent empty movements.

Iron and Steel

Testimony was introduced by witnesses representing steel industries located within the District at Indiana Harbor, Indiana, and East Chicago, Indiana; South Chicago and Grand Crossing, Illinois, and on behalf of the steel industries outside of the District located at Chicago Heights and Evanston, Illinois. The testimony referred generally to the influence of freight rates upon the original location of the steel industries within the District; to the history of those rates; and to such transportation factors as the volume and heavy loading of iron and steel billets, pig iron and scrap iron, which ordinarily are influential in obtaining reduced line-haul rates, and the fact that shippers in Central Freight Association territory can ship iron and steel to the District on a minimum of 36,000 pounds, while it is necessary to pay on a 60,000 pound minimum on shipments moving within the District so cited.

Rates in effect at other switching districts were cited by the steel interests, which it is contended moves considerable traffic and indicates such rates are lower than the District rates. Exhibit No. 19 was introduced in evidence showing the movement of 100 cars. This exhibit shows that the average detention from the time the cars were set for loading at the plant, until they were released, was 4.7 days. From this showing it is contended that it is clear that there is no congestion in the District, evidenced by the prompt handling of the cars.

The witness introducing Exhibit No. 19 desired to have the Lowrey basis of rates continued with certain exceptions to take care of special movements, and contends that any increases in the switching rates will divert a large volume of tonnage to the highways.

It is further shown that most of the outbound tonnage from the steel mills is loaded in cars which were received under load.

Railway Equipment

Freight, passenger, work and other equipment on its own wheels is generally hauled within the District at a per-car rate, but rates per 100 pounds are published by certain carriers. The charges for this service differ widely, and rates are not upon the Lowrey basis. It is the desire of the carriers as well as the manufacturers to continue to move this equipment on the excepted rates. A number of the carriers contemplate no change in these rates. In instances where increases are proposed, the increased rates will continue to be upon a per-car basis, or upon a weight basis lower than the Lowrey basis. Railroad equipment was not included in the carriers' cost study. It appears that new cars frequently move in train lots directly from the yards of the car companies to connecting line purchasing the car.

Other Commodities

Testimony similar to that already discussed was presented in connection with brick, building tile, coal and coke, and various other commodities. These commodities move within the District in carrier equipment, except in the case of some coal and coke shipments.

EX-LAKE TRAFFIC

Switching rates on Ex-Lake traffic moving directly or indirectly between docks and industries within the District are generally higher than on ex-rail traffic. The record indicates that at various times the tariff provision exclud-

ing ex-lake traffic has been withdrawn by certain carriers and subsequently reinstated. Under the proposed tariffs certain of the carriers have withdrawn the restriction. The present switching rates on ex-lake traffic range from 60 to 100 per cent higher than rates on corresponding ex-rail traffic. The proposed rates over the lines of carriers which do not intend to withdraw the restriction would range from 43 to 100 per cent higher on ex-lake traffic than on corresponding ex-rail traffic.

The shippers, through the Chicago Association of Commerce urge that all restrictions be removed from ex-lake traffic and that it be accorded the same level of rates as ex-rail traffic. It is stated that thousands of dollars have been spent to increase the facilities for the handling of lake traffic and that the continuance of the rule excepting ex-lake traffic will greatly retard the development of Chicago as a port, and minimize the benefits resulting from the improvements in the water service.

As hereinbefore stated, under the proposed tariffs certain of the carriers have withdrawn the restriction against the application of the Lowrey Basis of rates on ex-lake traffic. There is nothing in the record to indicate that the carriers proposing to eliminate this restriction should not be permitted to do so, but there is sufficient evidence to indicate that the removal of this restriction is desirable. Although there is no proposal before this Commission with reference to other carriers, defendants herein, no objection should be made to the proposals under suspension with reference to ex-lake traffic whereby certain carriers propose to remove their restriction against the application of the Lowrey basis of rates.

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GENERAL

Exhibit No. 97 shows the distribution of all cars moving in the District during the month of September, 1926, as between Illinois intrastate, Indiana intrastate, and interstate traffic. This Exhibit shows that 33.3 per cent of the total traffic moved Illinois intrastate, 6.4 per cent moved Indiana intrastate, or a total of 59.7 per cent of intrastate traffic, while the interstate movement represents 40.3 per cent of the total. This illustrates the importance of the intrastate movement as compared with the interstate.

The relative length of haul of intrastate and interstate switching district cost study cars has been taken from Exhibit No. 97, with the following result:

	Intrastate		
	Illinois	Indiana	Interstate
One-line hauls—Average haul (in Miles)	14.7	6.3	15.0
Two-line hauls—Average haul (in Miles)	15.9	7.3	27.5
Three-line hauls—Average haul (in Miles)	23.4	....	34.2

It will be noticed that the average one-line haul in miles, for Indiana intrastate traffic is 6.3 miles, while the interstate haul is 15 miles; the average for the two-line hauls on Indiana intrastate traffic is 7.3 miles, while the interstate average is 27.5 miles.

The record shows that at the beginning of this proceeding the carriers were generally in favor of the Lowrey basis of rates, and were of the opinion that they had been a de-

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cided advantage to both the shippers and carriers in the District.

Exhibit 64 was introduced at the May, 1928, hearing by

Witness Galligan, showing the exceptions in which no changes were proposed. At that time no proposal had been made by the carriers with reference to the elimination of various exceptions to the Lowrey basis, but at the hearing in September, 1928, carriers made an entirely different proposal and filed Exhibit 85 showing the rates to be increased, proposing to eliminate many other exceptions to the Lowrey basis. Tariffs have not been filed covering proposed increases in certain Indiana intrastate rates, and while those rates may be properly before the Interstate Commerce Commission in its Docket 19610, they are not before the Public Service Commission of Indiana.

It is contended that the development of industry in the District is due, in a large measure, to the cooperation of the carriers in the establishment of the Lowrey basis, which arose as a voluntary agreement between the carriers. It is further contended by the protestants that the destruction of the Lowrey basis or the establishment of prohibitive switching rates will greatly interfere with the development and expansion of the industrial district of Chicago, and that the disruption of business in such a fashion should not be permitted by the Commission on such a showing as the carriers have made in this proceeding.

It appears from the evidence that the Lowrey basis of switching rates has been of great advantage to both the shippers and carriers alike. The shippers are almost unanimously in favor of retaining the present system of Lowrey rates with exceptions thereto, and as hereinbefore

stated, at the beginning of this proceeding, the carriers likewise proposed to continue many exceptions to the general basis, and admitted that such rates had been advantageous to both parties.

The protestants contend that if the proposed increases become effective, the charges resulting therefrom, will, in many cases, nullify investments, compel the relocation of industries, and the substitution of highways or waterways for all rail movements. There is much evidence in the record to the effect that a substantial increase in switching rates in the District will result in the diversion of considerable additional traffic to the highways and to the waterways. The record shows that the District has many improved highways, making it possible for a large volume of tonnage to move expeditiously in trucks. An exhibit of record shows the navigable waters in the District. A number of witnesses testified as to the extent of present movement via the highway and waterway and the possibilities in case higher rates are put into effect. It appears clear that these competitors have already made important inroads upon the rail traffic in the district, and with the construction of additional public highways will, no doubt, absorb more of the business. We do not believe this to be an idle threat. A material increase in the present rates would, no doubt, divert traffic from the railroads, not only through the motor truck and barge competition, but by relocation of industries and other rearrangements, which would largely offset the revenue the carriers expect to receive from such increase.

As hereinbefore stated, this proceeding is the outgrowth

of the decision of the Interstate Commerce Commission in Docket 15110, *Jones & Laughlin Steel Corporation versus B. & O. R. R., supra.* No general investigation of the rates in the District was instituted by the Public Service Commission of Indiana; and therefore since no switching rates, other than those proposed in the suspended tariffs, are be-

fore this Commission, no action other than passing upon the reasonableness of the proposals, based upon the evidence submitted, can be taken by this Commission.

The review of a rate adjustment so important to an industrial center, such as Chicago, can not be taken lightly by the Commission. The welfare of the carriers and the growth of industry at Chicago are closely related. The traffic moving within the District reflects the development of manufacturing and of other enterprises within the District, and as this traffic increases, the line-haul traffic of the carriers also increased, as in many instances the intra-district movements of raw materials result in subsequent line haul movements of finished products.

FINDINGS

The burden of proving that the increased charges proposed are just, reasonable and lawful is upon the respondent carriers. Carriers depend upon the cost study as their sole justification for the proposed increases in switching rates. The record is entirely lacking in traffic evidence upon which the Commission could find that the proposed rates are justified.

It is contended by the shippers that the cost study made in this proceeding must be disregarded as it constitutes no fair basis of evidence as to what the service costs the car-

riers. It is further contended that the study ignores the fundamental fact that switching is performed as an accessorial service to the primary purpose of road-haul service and that it should not bear the total burden of delays caused by the road-haul trains.

A decision of the Interstate Commerce Commission was referred to by the shippers in the cause involving *Switching*

Rates at St. Louis and East St. Louis, 120 I. C. C. 216, where the Coverston-Saur formula for arriving at costs was involved, wherein the Commission said:

> "Like others, the one before us contains some flaws and irregularities, but there is nothing surprising about the cost per-car shown. They are such as we can expect to find in a large terminal district. Upon the whole we see no reason for taking the respondent's cost figure as indicating that switching in the St. Louis District is a rather expensive service. A *cost study is ordinarily little more than a very rough indication, and even if unusually comprehensive and exact, it should not be the sole basis for fixing rates. The value of the service to the shipper, and many practical considerations, may be of equal or greater importance.*"

We are of the opinion that the cost study upon which the carriers have relied in these proceedings as a basis for increasing their rates is so inaccurate that it is not a reliable guide as to the actual costs of the service rendered.

After giving full weight and consideration to the evidence presented in these proceedings, we are of the opinion that it is clearly insufficient to justify the increased rates proposed, or any change in the present rates.

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The Commission having considered the evidence both oral and documentary and statements of counsel and being fully advised in the premises is of the opinion and finds:

(1) That the traffic included in the cost study moving over certain railroads selected by the carriers is not representative of the intra-district traffic as a whole;

(2) That even approximate costs of handling the study cars cannot be determined from the present record;

(3) That the record is entirely silent as to the costs of handling the "other" cars not included in the study;

(4) That the record does not contain sufficient evidence to determine the proper amount to be allowed for taxes and return on investment;

(5) That the proposed changes in rates involved in these proceedings have not been justified;

(6) That the schedules under suspension in this proceeding should be ordered permanently cancelled as of November 10, 1931, and it will be so ordered.

IT IS THEREFORE ORDERED BY THE PUBLIC SERVICE COMMISSION OF INDIANA, that the respondent carriers herein, be, and they are hereby notified and required to permanently cancel said schedules under suspension in this proceeding, on or before November 10, 1931, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed by law.

IT IS FURTHER ORDERED, that the proceeding in this cause, be, and the same is hereby dismissed and discontinued.

ELLIS, CUTHBERTSON, WEST, McCARDLE, CONCUR.

Singleton Absent.

APPROVED AUGUST 26, 1931.

(SEAL)

ATTEST: FRED I. KING,
Secretary.

APPENDIX "A"

CHICAGO SWITCHING DISTRICT DEFINED

Beginning at a point on the shore of Lake Michigan, due north of Clarke Junction, Indiana; thence south to and including Clarke Junction (including freight interchanged between the Indiana Harbor Belt and Wabash at Tolleston, Indiana), thence southwesterly and south just west of the Elgin, Joliet & Eastern to but not including Ivanhoe, Indiana; thence southwesterly to and including Hessville, Indiana, thence westerly along the north bank of the Little Calumet River to a point just west of Globe, Illinois; thence northwesterly west of the Pennsylvania (Logansport Division) to a point just south of Dolton, Illinois; thence southwesterly to a point just south of Homewood, Illinois; thence northwesterly just west of the Grank Trunk to a point just west of Blue Island, Illinois; thence north and northwesterly just west of the Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt to a point just south and west of McCook, Illinois; thence southwesterly just south of the Chicago & Illinois Western to and including Willow Springs, Illinois; thence northeasterly just north of the Chicago & Illinois Western to a point just west of McCook, Illinois; thence north and northwesterly just west of the Indiana Harbor Belt to a point just south and west of Melrose Park, Illinois; thence west just south of the Chicago & North Western to and including the Proviso transfer yard of that company; thence north to Addison Street; thence east to a point south and west of Godfrey

yard on the Chicago, Milwaukee, St. Paul & Pacific; thence to a point just north of the Chicago, Milwaukee, St. Paul

& Pacific; thence east to the line of the Minneapolis, St. Paul & Sault Ste. Marie; thence northerly just west of the Minneapolis, St. Paul & Sault Ste. Marie to and including Des Plaines, Illinois; thence southeasterly just east of the Chicago & North Western Railway to the city limits of Chicago; thence east just north of the said city limits of the Mayfair cut off of the Chicago & North Western; thence northeasterly just west of the Chicago & North Western to and including Greenwood Street Station; thence southwesterly just east of the Chicago & North Western to the city limits of Chicago; thence east just north of city limits to the east line of Chicago Avenue or Clark Street; thence northerly on the east line of Chicago Avenue 725 feet; thence east to the east line of Chicago, Milwaukee, St. Paul & Pacific; thence southeasterly to center line of Howard Street; thence easterly on the said center line of Howard Street to the shore of Lake Michigan; thence southerly along the shore line to the point of beginning.

APPENDIX I.

Schedules filed to become effective September 20, 1933, in compliance with the decision and order in Docket 19610, dated July 3, 1933.

THE ALTON RAILROAD COMPANY

Supplement No. 13 to Tariff No. 1171-N
" 13 to I. C. C. No. 5
" 11 to Ill. C. C. No. 5
" 14 to Tariff No. 1400-U
" 12 to I. C. C. No. 50
" 14 to Ill. C. C. No. 29
" 13 to Tariff No. 2-M
" 13 to I. C. C. No. 55
" 13 to Ill. C. C. No. 34
" 15 to Tariff No. 783-G
" 15 to I. C. C. No. A-1653
" 15 to Ill. C. C. No. 700
" 30 to Tariff No. 662-K
" 26 to I. C. C. No. A-1959
" 30 to Ill. C. C. No. 889

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

Supplement No. 16 to Tariff No. 10265-F
" 15 to I. C. C. No. 10817
" 12 to Ill. C. C. No. 462

THE BALTIMORE AND OHIO RAILROAD COMPANY

Local and Proportional Freight Tariff No. H-2687-Q, I. C. C. No. WL-10286, Ill. C. C. No. WL-822.

Local, joint and proportional Freight Tariff H 3454-E, various commodities, I. C. C. WL-10255 (Suppl. 40), Suppl. 40 to I. R. C. WL-1440

Local, joint and proportional freight tariff H 2865-X, Sand and loam, Suppl. 3 to I. C. C. WL 10205; Suppl. 3 to I. R. C. W. L.-1423

Local Freight Tariff of Switching Rates, I. C. C. No. 410; I. R. C. No. 196

THE BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD COMPANY

Supplement No. 16 to Tariff Ill. C. C. No. 104
" 16 to I. C. C. No. 327
" 17 to Ill. C. C. No. 162

Tariff I. C. C. No. 410, Ill. C. C. No. 217

Tariff I. C. C. No. 411, Ill. C. C. No. 218

Tariff I. C. C. No. 412, Ill. C. C. No. 219

Tariff I. C. C. No. 413, Ill. C. C. No. 220

THE BELT RAILWAY COMPANY OF CHICAGO

Supplement No. 1 to Local Freight Tariff No. 108-A, Ill. C. C. No. 107

Supplement No. 1 to Tariff No. 77-C
" 1 to I. C. C. No. 113
" 1 to Ill. C. C. No. 83

Local and proportional Freight Tariff No. 122-R, Ill. C. C. No. 141, I. C. C. No. 169

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

I. C. C. No. 11558

CHICAGO AND CALUMET RIVER RAILROAD COMPANY

Supplement No. 13 to Tariff Ill. C. C. No. 18

CHICAGO AND EASTERN ILLINOIS RAILWAY COMPANY
(Charles M. Thomson, Trustee)

Supplement No. 34 to Freight Tariff No. 325-B
" 34 to I. C. C. No. 158
" 29 to Ill. C. C. No. 128
" 18 to Freight Tariff No. 175-E
" 18 to I. C. C. No. 191
" 18 to Ill. C. C. No. 153
" 57 to Freight Tariff No. 600-B
" 57 to I. C. C. No. 200
" 57 to Ill. C. C. No. 167
" 13 to Freight Tariff No. 850-A
" 13 to I. C. C. No. 206
" 12 to Ill. C. C. No. 166
" 86 to Freight Tariff No. 90-C
" 86 to I. C. C. No. 214
" 86 to Ill. C. C. No. 174
" 16 to Freight Tariff No. 225-B
" 16 to I. C. C. No. 222
" 16 to Ill. C. C. No. 179
" 15 to Freight Tariff No. 95-B
" 15 to I. C. C. No. 232
" 15 to Ill. C. C. No. 187
" 47 to Freight Tariff No. 400-B
" 47 to I. C. C. No. 239
" 47 to Ill. C. C. No. 190
" 47 to Freight Tariff No. 505-A
" 47 to I. C. C. No. 241
" 47 to Ill. C. C. No. 196
" 7 to Freight Tariff No. 235-C
" 7 to I. C. C. No. 248
" 7 to Ill. C. C. No. 197
" 22 to Freight Tariff No. 500-C
" 22 to I. C. C. No. 258

" 22 to Ill. C. C. No. 206
" 18 to Freight Tariff No. 775-A
" 18 to I. C. C. No. 271
" 18 to Ill. C. C. No. 213
" 11 to Freight Tariff No. 800-B
" 11 to I. C. C. No. 284
" 9 to Ill. C. C. No. 223
" 17 to Freight Tariff No. 240-B
" 17 to I. C. C. No. 316
" 17 to Ill. C. C. No. 240
" 4 to Freight Tariff No. 300-A
" 4 to I. C. C. No. 379
" 4 to Ill. C. C. No. 272

CHICAGO AND ERIE RAILROAD COMPANY

Local Freight Tariff No. 452-H, I. C. C. No. A-7239, Ill. C. C. No. 217

CHICAGO & ILLINOIS WESTERN RAILROAD

Supplement No. 43 to Tariff G. F. D. No. 520-D
" 29 to I. C. C. No. 118-A
" 30 to Ill. C. C. No. 12-A

Local, Joint and Proportional Freight Tariff G. F. D. 516-E, I. C. C. No. 124-A, Ill. C. C. No. 20-A

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

Supplement No. 43 to Tariff G. F. D. No. 211-K
" 24 to Ill. C. C. No. 380
" 59 to Tariff G. F. D. No. 5600-I
" 28 to Ill. C. C. No. 555
" 43 to Tariff G. F. D. No. 6822-K
" 33 to Ill. C. C. No. 422
" 15 to Tariff G. F. D. No. 7100-O
" 14 to Ill. C. C. No. 694

" 8 to Tariff G. F. D. No. 8110-H
" 6 to Ill. C. C. No. 668
" 15 to Tariff G. F. D. No. 8256-T
" 8 to Ill. C. C. No. 660
" 23 to Tariff G. F. D. No. 8300-G
" 21 to Ill. C. C. No. 646
" 33 to Tariff G. F. D. No. 16141-D
" 24 to Ill. C. C. No. 503
" 7 to Tariff G. F. D. No. 16389-I
" 4 to Ill. C. C. No. 516
" 3 to Tariff G. F. D. No. 16920-B
" 3 to Ill. C. C. No. 683
" 3 to Tariff G. F. D. No. 8950-M
" 3 to I. C. C. No. 10250
" 3 to Ill. C. C. No. 655
" 19 to Tariff G. F. D. No. 5678-T
" 13 to I. C. C. No. 10317
" 13 to Ill. C. C. No. 685

Tariff G. F. D. No. 12575-M, I. C. C. No. 10371, Ill. C. C. No. 704

Supplement No. 24 to Tariff G. F. D. No. 13640-E
" 13 to I. C. C. No. 10041
" 17 to Ill. C. C. No. 604

CHICAGO AND WESTERN INDIANA RAILROAD COMPANY

Local and Proportional Freight Tariff No. 18-P, I. C. C. No. 58, Ill. C. C. No. 51

CHICAGO, AURORA AND ELGIN RAILROAD COMPANY, A. A. Sprague and Britton I. Budd, Receivers.

Freight Tariff No. 61-B, I. C. C. No. 62, Ill. C. C. No. 84

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

Supplement No. 27 to Tariff G. F. O. No. 7072-O
" 27 to I. C. C. No. 17074
" 27 to Ill. C. C. No. 1516
" 24 to Tariff G. F. O. No. 8350-N
" 24 to I. C. C. No. 17679
" 24 to Ill. C. C. No. 1568
" 10 to Tariff G. F. O. No. 2224-W
" 10 to I. C. C. No. 18061
" 10 to Ill. C. C. No. 1668

Tariff G. F. O. No. 1921-M, I. C. C. No. 18174, Ill. C. C. No. 1698

CHICAGO GREAT WESTERN RAILROAD COMPANY

Supplement 29 to Tariff 30-J
" 25 to I. C. C. 5292
" 24 to Ill. C. C. 195

CHICAGO JUNCTION RAILWAY (The Chicago River and Indiana Railroad Company, Lessee)

Freight Tariff No. 22-N, I. C. C.—C. J. No. 53, Ill. C. C.—C. J. No. 56

Freight Tariff No. 31-B, I. C. C.—C. J. No. 54, Ill. C. C.—C. J. No. 58

Freight Tariff No. 26-G, Ill. C. C.—C. J. No. 57

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

Supplement No. 51 to Tariff G. F. D. No. 10700-G
" 51 to I. C. C. No. B-5749
" 40 to Ill. C. C. No. 317
" 31 to Tariff G. F. D. No. 12970-F
" 31 to I. C. C. No. B-5866
" 28 to Ill. C. C. No. 330

" 27 to Tariff G. F. D. No. 6976-J
" 27 to I. C. C. No. B-6104
" 20 to Ill. C. C. No. 365
" 14 to Tariff G. F. D. No. 3000-O
" 13 to I. C. C. No. B-6463
" 14 to Ill. C. C. No. 425
" 24 to Tariff G. F. D. No. 6100-I
" 24 to I. C. C. No. B-6080
" 16 to Ill. C. C. No. 360
" 7 to Tariff G. F. D. No. 6000-P
" 7 to I. C. C. No. B-6380
" 7 to Ill. C. C. No. 414
" 6 to Tariff G. F. D. No. 11300-G
" 6 to I. C. C. No. B-6425
" 4 to Ill. C. C. No. 419
" 3 to Tariff G. F. D. No. 10470-L
" 3 to I. C. C. No. B-6429
" Ill. C. C. No. 435
" 2 to Tariff G. F. D. No. 14961-J
" 2 to I. C. C. No. B-6460
" 2 to Ill. C. C. No. 424

THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY

Tariff No. 59-N, I. C. C. No. 113, Ill. C. C. No. 88

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY

Supplement No. 73 to Freight Tariff No. 26061-N
" 38 to I. C. C. No. C-11927
" 72 to Ill. C. C. No. 536
" 18 to Freight Tariff No. 24604-J
" 17 to I. C. C. No. C-12008
" 16 to Ill. C. C. No. 555
" 5 to Freight Tariff No. 27474-J
" 4 to I C. C. No. C-12226

" 5 to Ill. C. C. No. 591
" 37 to Freight Tariff No. 21432-P
" 29 to I. C. C. No. C-12231
" 29 to Ill. C. C. No. 593

CHICAGO SHORT LINE RAILWAY COMPANY

Joint Freight Tariff No. 201-I
Supplement No. 2 to Ill. C. C. No. 42
Joint Switching Tariff No. 209-A
Supplement No. 2 to Ill. C. C. No. 43
Switching Tariff No. 31, Ill. C. C. No. 45

CHICAGO, SOUTH SHORE AND SOUTH BEND RAILROAD

Supplement No. 1 to Local Freight Tariff No. 113-C
" 1 to Ill. C. C. No. 37
Freight Tariff No. 88-F, Ill. C. C. No. 39, I. R. C. No. 74, I. C. C. No. 99

CHICAGO, WEST PULLMAN & SOUTHERN RAILROAD COMPANY

Supplement No. 29 to Local Freight Tariff No. 90
" 27 to I. C. C. No. 38
" 27 to Ill. C. C. No. 56
" 1 to Tariff G. F. D. No. 105
" 1 to Ill. C. C. No. 71
" 1 to Tariff G. F. D. No. 115
" 1 to Ill. C. C. No. 81
" 1 to Tariff G. F. D. No. 116
" 1 to Ill. C. C. No. 82
" 1 to Tariff G. F. D. No. 117
" 1 to Ill. C. C. No. 82
" 1 to I. C. C. No. 53

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

Supplement No. 36 to Freight Tariff No. 56-I
" 32 to Ill. C. C. No. 434
" 56 to Freight Tariff No. 40-E
" 47 to Ill. C. C. No. 515
" 1 to Freight Tariff No. 46-Q
" 1 to Ill. C. C. No. 544
" 1 to Freight Tariff No. 139
" 1 to Ill. C. C. No. 547
" 2 to Freight Tariff No. 136-A
" 1 to Ill. C. C. No. 550
" 35 to Freight Tariff No. 53-H
" 19 to Ill. C. C. No. 514
" 21 to Freight Tariff No. 14-H
" 18 to Ill. C. C. No. 539
" 7 to Freight Tariff No. 4-E
" 7 to Ill. C. C. No. 546

Freight Tariff No. 56-J, Local and proportional rates on coal and coke Supplement 32 to I. R. C. No. 537

GRAND TRUNK WESTERN RAILROAD COMPANY

Supplement No. 38 to Tariff No. 520-L
" 28 to I. C. C. No. A-2336
" 27 to Ill. C. C. No. 96

Tariff No. 476-C, I. C. C. No. A-2555, Ill. C. C. No. 127

ILLINOIS CENTRAL RAILROAD COMPANY

Fifteenth Revised page 10 to Tariff No. 1-C, I. C. C. No. A-8213, I. P. U. C. No. A-1

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ILLINOIS NORTHERN RAILWAY

Supplement No. 32 to Tariff G. F. D. No. 77
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Joint Freight Tariff G. F. D. No. 109, I. C. C. No. 55, Ill. C. C. No. 79

Supplement No. 1 to Tariff G. F. D. No. 92
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Tariff G. F. D. No. 507-A, Ill. C. C. No. 292

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Local and Joint Freight Tariff on Sand and Gravel, I. C. C. No. 843, I. R. C. No. 533

Local Commodity Freight Tariff on Car Wheels, Suppl. No. 1 to I. R. C. No. 438

Local Commodity Freight Tariff on Ammonical Liquor, Suppl. No. 14 to I. R. C. No. 386

Local Commodity Freight Tariff on Iron and Steel Articles, Suppl. No. 1, I. R. C. No. 493

Local Commodity Freight Tariff on Manufacturing Plant Refuse, i. e., Waste Material, Supplement No. 1 to I. R. C. No. 441

MANUFACTURERS' JUNCTION RAILWAY COMPANY

Local Freight Tariff No. 1-F, I. C. C. No. 27, Ill. C. C. No. 17

THE MICHIGAN CENTRAL RAILROAD COMPANY (The New York Central Railroad Company, Lessee)

Supplement No. 46 to Tariff G. F. D. No. 9251-J
" 32 to I. C. C. No. 5890
" 23 to Ill. C. C. No. 672
" 76 to Tariff G. F. D. No. 9271-O
" 58 to I. C. C. No. 5932
" 47 to Ill. C. C. No. 696
" 68 to Tariff G. F. D. No. 9512-G
" 46 to I. C. C. No. 5724
" 44 to Ill. C. C. No. 566

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY

Supplement No. 21 to Freight Tariff No. 57-B
" 20 to I. C. C. No. 6174
" 15 to Ill. C. C. No. 240
" 1 to Freight Tariff No. 225-B
" 1 to I. C. C. No. 6540
" 1 to Ill. C. C. No. 299
" 15 to Freight Tariff No. 175-C
" 13 to I. C. C. No. 6519
" 10 to Ill. C. C. No. 295

THE NEW YORK CENTRAL RAILROAD COMPANY

Supplement to Tariff No. 3439
" 16 to Ill. C. C.—L. S. No. C-93

Tariff No. 3415-B, I. C. C.—L. S. No. 1789, Ill. C. C.—L. S. No. 916, I. C. C.—L. S. No. C-283, Ill. C. C.—L. S. No. C-115

Supplement No. 82 to Tariff No. 1429-A
" 64 to I. C. C.—L. S. No. 1649
" 46 to Ill. C. C.—L. S. No. 890
" 122 to Tariff No. 131-C
" 107 to I. C. C.—L. S. No. 1685
" 72 to Ill. C. C.—L. S. No. 897

Tariff No. 177-B, Joint, Local and proportional freight tariff on ashes, cinders, slag, Suppl. 4 to I. C. C.—L. S. 1775; Suppl. 4 to I. R. C.—L. S. 988

Tariff No. 177-B, Joint, Local and Proportional freight tariff on ashes, cinders, slag, Suppl. No. 5 to I. C. C. —L. S. 1775; Suppl. No. 5 to I. R. C.—L. S. 988

THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY

Tariff G. F. D. No. 26-O, I. C. C. No. 5581, Ill. C. C. No. 194

THE PENNSYLVANIA RAILROAD COMPANY

Supplement No. 8 to Ill. C. C. 11, Tariff 33-I
" 2 to Ill. C. C. F-455, Tariff 147-B. I. C. C. F-2097

Tariff 498-A, Ill. C. C. 59, I. C. C. 1070

Supplement No. 6 to Ill. C. C. 46, Tariff 146-D, I. C. C. 754

Tariff No 303A, Local Freight Tariff on Freight, all kinds, I. C. C. No. 1073, I. R. C. No. 95

PULLMAN RAILROAD COMPANY

Tariff G. F. D. No. 1-F, I. C. C. No. 26, Ill. C. C. No. 28

WABASH RAILWAY COMPANY, (Walter S. Franklin and Frank C. Nicodemus, Jr., Receivers)

Supplement No. 2 to Local Tariff No. F-7181
" 2 to I. C. C. No. 6773
" 2 to Ill. C. C. No. 913
" 39 to Tariff No. C-16493
" 33 to I. C. C. No. 6473
" 31 to Ill. C. C. No. 817
" 8 to I. C. C. No. 6590

C. W. GALLIGAN, Agent

Supplement No. 13 to Tariff No. 20-T
" 13 to I. C. C. No. 242
" 13 to Ill. C. C. No. 110
" 4 to Freight Tariff No. 36-A
" 4 to I. C. C. No. 255
" 4 to Ill. C. C. No. 116

Freight Tariff No. 10-B, I. C. C. No. 263, Ill. C. C. No. 121

Tariff No. 21-P, I. C. C. No. 264, Ill. C. C. No. 122

Tariff No. 23-Q, I. C. C. No. 265, Ill. C. C. No. 123

B. T. JONES, Agent

Supplement No. 12 to Freight Tariff No. 197-O
" 12 to I. C. C. No. 2538
" 12 to Ill. C. C. No. 314

B. T. JONES, Agent, and C. W. GALLIGAN, Agent

Supplement No. 9 to Freight Tariff No. 420-E, I. C. C. No. 2489, Ill. C. C. No. 307 (Jones), I. C. C. No. 222, Ill. C. C. No. 98 (Galligan)

And such other tariffs as may contain similar rates in the Chicago switching district.

[fols. 433 & 434] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF UNITED STATES OF AMERICA—Filed Oct. 13, 1933

United States of America, one of the defendants in the above-entitled cause, for answer to the bill of complaint filed herein against it, answers and says:

I

United States admits that the allegations contained in the opening paragraph and in paragraphs I, II and III are true.

II

United States, for answer to paragraph IV, admits for the purposes of this suit that the allegations therein are substantially true as alleged, except that, it alleges that the first sentence of the first subdivision of said paragraph IV is incomplete in its statement concerning the scope of the proceeding conducted by the Interstate Commerce Commission therein described, and further alleges that said [fol. 435] investigation included not only interstate switching rates on carload traffic but also included "all rates and charges for the switching within the Chicago switching district of all carload traffic moving in interstate commerce, and their relation to like rates and charges for switching in intrastate commerce;" and excepting the statement in the second sentence of the second subdivision of said paragraph IV that the rates prescribed by the Commission became effective "by voluntary action of the carriers," and alleges the fact to be that said rates were prescribed in and were required by the Commission's order in that proceeding to be established by the carriers respondents to the order.

III

Answering paragraph V, United States says that the matters, things and conclusions therein alleged are irrelevant and immaterial to the question whether the order of the Interstate Commerce Commission issued July 3, 1933, is lawful and valid, for that, said order is not affected by,

and its validity may not be tested by anything done or omitted to be done by the Illinois Commerce Commission or the Public Service Commission of Indiana.

IV

United States admits the truth of the allegations contained in the first subdivision of paragraph VI, but alleges that the allegations contained in the second and third subdivisions thereof are argumentative, incompetent and irrelevant to the question whether said order of July 3, 1933, is valid.

[fol. 436] V

Answering paragraph VII, United States alleges that all the matters, things and conclusions therein set forth are argumentative, conclusory, and constitute neither a fair nor an accurate statement of the analysis, discussion and remarks of the Interstate Commerce Commission concerning the cost study therein mentioned, or of all the evidence of record before the Commission, or of its findings based thereon, and for a full, fair and complete statement of the Commission's remarks, discussion and statements concerning the evidence of record before it, including said cost study, and of its findings in said proceedings, United States respectfully refers the Court to the full text of the Commission's reports, which are annexed to the bill of complaint as Exhibits A and C.

Further answering said paragraph VII, United States alleges that the validity of said order of July 3, 1933, is not affected by, and may not be tested by the views, comment or action of the Illinois Commerce Commission or the Public Service Commission of Indiana; and denies that the validity of said order is affected by the Commission's denial of plaintiffs' petition for reargument and reconsideration.

VI

United States denies each and every allegation contained in paragraph VIII of the bill of complaint; and affirmatively alleges that the Commission's said order of July 3, 1933, is within the Commission's statutory power, and is lawful and valid in all respects; that all findings necessary or required by law were made by the Commis-

sion, and that all of said findings are fully and adequately supported by evidence properly received and considered [fol. 437] by the Commission.

VII.

Answering paragraph IX, United States denies the allegations thereof, and denies that the Commission's order is void for the reasons therein stated, or for any other reason. Further answering said paragraph, United States admits that the Commission made findings substantially as set forth in subdivisions (a) and (b) thereof, but denies that said findings are unsupported by evidence; but United States denies that the Commission made the finding which plaintiffs undertake to state in subdivision (c) of said paragraph IX, and alleges that, instead thereof, the Commission in truth and in fact found that:

While the evidence shows that the existing competition by motor truck is material, and indicates that this means of transportation will be utilized to a greater extent if the intrastate rates are increased, and that therefore, some additional tonnage in all probability will be lost to trucks, or diverted to barge and pipe-line movement, the record nevertheless is convincing that the carriers will derive a substantial increase in revenue if the intrastate rates are increased to the interstate basis, and we so find.

And, United States, further answering the last subdivision of said paragraph IX, alleges that the allegations thereof are argumentative, incompetent, irrelevant and immaterial, and require no answer, for that, (1) the recommendations made to the Commission by its examiners have no legal force or effect whatever, for the commissioners and not the examiners have power under the Interstate Commerce Act to fix rates and issue orders, and (2) the last sentence of said subdivision is mere surplusage and argument, and raises no issue of law, since it is insufficient as an allegation that the Commission denied plaintiffs a full and adequate hearing, or abused its discretion in refusing to grant their petition for further hearing.

[fol. 438] VIII

Answering paragraph X, United States denies that the Commission's order is unlawful or void for any of the rea-

sons alleged therein or for any other reason, and denies all allegations, both of conclusion and fact, which are properly pleaded in said paragraph. Further answering said paragraph, United States alleges that the Commission's said order of July 3, 1933, and all findings on which it rests, are fully and adequately supported by evidence, and that said order is lawful and valid in all respects.

Further answering said paragraph X, United States alleges that the matters, things and conclusions alleged and argued in subdivisions (a), (b), (c), (d), (e), (i), (j), (m), (n), (o), and all allegations of subdivision (p), excepting the first sentence thereof, are incompetent and irrelevant to any issue which may properly be raised in this suit, for the reason that, the allegations of said subdivisions, (1) consist of pure argument concerning the Commission's refusal to find and decide upon the evidence in accordance with plaintiffs' views as to what it proved, and (2) attempt to have this Court go beyong its jurisdiction and usurp the Commission's exclusive administrative and legislative power by weighing the evidence and deciding what conclusions and findings of fact the Commission should have made.

IX

United States denies the allegation in paragraph XI that the Commission's order is void or unlawful by reason of its indefiniteness or lack of precision in the respects mentioned in said paragraph, or in any other respect.

[fol. 439]

X

United States denies the allegations contained in paragraph XII of the bill.

XI

Answering paragraph XIII, United States says it is without knowledge as to whether the plaintiffs will tender in evidence before this Court a certified copy of the record of evidence before the Commission on which its order of July 3, 1933, was based.

XII

United States, answering paragraph XIV, admits for the purposes of this suit that tariffs have been filed substantially as alleged therein, but denies the remaining allega-

tions of said paragraph, and particularly denies that plaintiffs will suffer irreparable loss or injury, or any legal damage whatever, as a consequence of the Commission's said order of July 3, 1933.

XIII

Except as herein expressly admitted, United States denies each and every allegation contained in the bill of complaint, and in the several separate paragraphs and subdivisions thereof.

XIV

Further and affirmatively answering the bill of complaint, United States admits and alleges that the Commission made and issued its said order of July 3, 1933, that before issuing said order it conducted extensive hearings at which all parties, including these plaintiffs, were permitted and allowed full opportunity to be heard, that the Commission duly weighed and considered said evidence, [fol. 440] and from it made all proper and necessary findings; that said order and the findings upon which it rests are fully supported by the evidence; and that in making and issuing said order the Commission did not act arbitrarily, unreasonably or otherwise in excess of, or contrary to, its statutory power, or other law.

Wherefore, having fully answered the bill of complaint, United States prays that the relief therein prayed be denied and the bill of complaint dismissed with costs to the plaintiffs, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

Elmer B. Collins, Special Assistant to the Attorney General. Harold M. Stephens, Assistant Attorney General. Dwight H. Green, United States Attorney.

[fols. 441 & 442] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fols. 443 & 444] IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERVENTION OF INTERSTATE COMMERCE COMMISSION—Filed Oct. 13, 1933

To the Honorable Judges of said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. Code, Supp. II, Title 28, Sec. 45a), we hereby enter the appearance of the Interstate Commerce Commission, as a party defendant, and of ourselves as its counsel, in the above-entitled suit.

Daniel W. Knowlton. H. L. Underwood.

[fol. 445] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed Oct. 13, 1933

Comes now the Interstate Commerce Commission, intervening defendant herein, hereafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

[fol. 446] I

Answering the introductory paragraph and paragraphs numbered I to III, inclusive, and paragraphs V and VI of the bill of complaint, the Commission admits that the allegations therein contained are true.

II

Answering paragraphs numbered IV, VII to XI, inclusive, the Commission admits and alleges that it made and entered its report and order dated July 31, 1931, specified

in the first subparagraph of paragraph IV of the complaint, in a proceeding then pending before it known and designated as Docket No. 19610, Switching Rates in Chicago Switching District; that said proceeding was initiated by the Commission on its own motion to determine the lawfulness of all rates and charges for switching on carload traffic moving in interstate commerce within the Chicago Switching District, and their relation to like rates and charges for switching in intrastate commerce, with a view to prescribing such reasonable, proper, nondiscriminatory, nonprejudicial, and otherwise lawful switching rates for said traffic as the facts and circumstances might appear to warrant. A copy of said order for investigation was served upon the Governor of the State of Illinois, the Governor of the State of Indiana, the Illinois Public Service Commission and the Public Service Commission of Indiana, as well as on numerous other persons, firms, associations and corporations. Certain other cases pending before the Commission and certain cases pending before the Illinois Commerce Commission, and a certain case pending before the Public Service Commission of Indiana, which said cases before the two state commissions involved the intrastate switching rates on some of the commodities moving within [fol. 447] these respective states in intrastate commerce within the said Chicago Switching District, were heard with the general investigation proceeding; that full hearings were held in which representatives of the said state commissions, the Board of Trade of the City of Chicago and the Acme Steel Company, plaintiffs in this suit, participated; that thereafter the Commission made, entered and served upon all the parties in said proceeding its said report and order of July 31, 1931, whereby the Commission found reasonable certain rates on all commodities, in carloads, moving in interstate commerce within the Chicago Switching District and required the establishment and maintenance of such rates by the carriers respondents in the proceeding, and for full information concerning its findings and requirements in the premises, the Commission respectfully refers the Court to its said report and order, which is attached to and made a part of the bill of complaint herein as "Appendix A," which said report and order the Commission incorporates by reference as a part of this answer. That in compliance with said order rates were estab-

lished and became effective December 10, 1931, and are now in effect.

The Commission further alleges that no order was made by it at that time as to intrastate rates within the states of Indiana and Illinois, the Commission expressing the hope "that both the Illinois Commerce Commission and the Public Service Commission of Indiana will bring their rates in harmony with the conclusions herein"; that thereafter the said state commissions found not justified the rates proposed for application on intrastate commerce within the respective states and by formal orders required cancellation of the schedules or tariffs containing said rates.

[fol. 448] The Commission further alleges that thereafter, following the failure of the said state commissions to bring their rates into harmony with the interstate rates authorized and required to be established and maintained by the Commission in its said order of July 31, 1931, and upon the application of the respondent carriers, it reopened the general investigation for further hearing with respect to the relation of the rates and charges for switching in intrastate commerce in the said switching district to the rates theretofore prescribed by it for like switching in interstate commerce, for the purpose of determining whether the adjustment of the interstate and intrastate rates and charges was unduly prejudicial to interstate shippers and traffic and unjustly preferential of intrastate shippers and traffic, or unjustly discriminatory against interstate commerce, in violation of Section 13 of the Interstate Commerce Act; that further and full hearings were held which were participated in by a large number of parties interested, including the plaintiffs in this suit and thereafter the Commission made, entered and served upon all parties in said proceeding, including the plaintiffs herein, its report and order of July 3, 1933, referred to in the fourth subparagraph of paragraph numbered IV of the bill of complaint, and for full information concerning its findings and requirements in the premises, the Commission respectfully refers the Court to a copy of said report and order, which is annexed to and made a part of the bill of complaint herein as "Exhibit C," which said report and order the Commission incorporates by reference as a part of this answer.

[fol. 449] The Commission alleges that in the said proceedings and prior to the making, entering and serving of

its said report and order of July 31, 1931, and of its report and order of July 3, 1933, the parties thereto were, and each of them was, accorded the full hearing provided for by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon the matters covered in said reports and orders were submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiffs herein by their counsel; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including the particular questions raised by plaintiffs in this suit, whereupon the Commission determined said matters and entered and served upon all the parties to said proceeding, including the plaintiffs herein, its said reports and orders; that said reports and orders included the Commission's findings of fact, decision, conclusions, orders and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which said orders are based.

The Commission further alleges that the findings and conclusions in said reports were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid; that in making said reports and orders it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its atten-[fol. 450] tion on behalf of the parties to said proceedings by their respective counsel, including all material matters covered by the allegations of the bill of complaint herein; that said orders of July 31, 1931, and July 3, 1933, were not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support them, or without appropriate, adequate and sufficient findings for which there was support in the evidence; that in making said orders the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in the bill of complaint.

Further answering paragraph numbered VII, the Commission avers that the allegations therein are argumenta-

tive; however, it denies that it made any error or adopted any improper method in giving consideration to the cost study referred to in said paragraph; the Commission avers that the said cost study was undertaken and made after a conference or conferences attended by representatives of the railroad carriers involved and the shippers interested in rates in the said Chicago Switching District; that the selection of the particular railroad carriers upon which the cost study was had was made by agreement at said conference or conferences and was the judgment of the said representatives that the railroads so selected were representative in respect of the traffic and other conditions in connection with transportation by rail in switching movements in said Chicago Switching District.

Further answering paragraphs numbered VIII to XI, inclusive, of the said bill of complaint, the Commission denies that its said order of July 3, 1933, is either unlaw- [fol. 451] ful or void for the reasons or in the particulars stated in said paragraphs or for any other reason or reasons or in any other particular; it denies that in the making of its reports and orders it acted without authority, or failed or omitted to perform any act or function necessary and requisite to comply with the requirements of the applicable law or in the discharge of its duties in the premises; it denies that its said order is uncertain or indefinite or lacking in precision as alleged in paragraph numbered XI.

Further answering paragraphs numbered X and XI, the Commission avers that the allegations therein are argumentative and present contentions as to the correctness of the Commission's findings of administrative facts as set forth in its said reports of July 31, 1931, and July 3, 1933; and that said contentions and matters are such as are by the Interstate Commerce Act committed to it for determination as an administrative tribunal.

III

Answering paragraph numbered XII, the Commission denies that it erred in refusing to reopen the proceedings in Docket No. 19610; denies that it erred in refusing to vacate its order of July 3, 1933, or in refusing to set the case for further hearing, and denies that its said order is for that reason or any other reason void; on the contrary,

the Commission alleges that its action in denying said motion or petition was in the exercise of the discretion validly conferred upon it by the Interstate Commerce Act and that said action did not constitute an abuse of that discretion.

[fol. 452] IV

Answering the allegation contained in the second subparagraph of paragraph numbered XIV, the Commission denies that the operation of its said order of July 3, 1933, will subject plaintiff Acme Steel Company and others to irreparable loss and injury.

Except as herein expressly admitted, the Commission denies the truth of each and all the allegations contained in the bill of complaint in so far as they conflict either with the allegations herein, or with either the statements, findings, or conclusions of fact included in its said report and order of July 31, 1931, and its report and order of July 3, 1933, which reports and orders are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain and prove as this Honorable Court shall direct, and it hereby prays that said bill of complaint be dismissed.

Interstate Commerce Commission, by Daniel W. Knowlton, Chief Counsel, H. L. Underwood, Attorney.

[fols. 453-455] *Duly sworn to by William E. Lee. Jurat omitted in printing.*

[fol. 456] In United States District Court

[Title omitted]

Answer of Carrier Defendants—Filed Oct. 13, 1933

Come now

The Alton Railroad Company,
The Atchison, Topeka and Santa Fe Railway Company,
The Baltimore and Ohio Chicago Terminal Railroad Company,
The Baltimore and Ohio Railroad Company,
The Belt Railway Company of Chicago,

The Chesapeake and Ohio Railway Company,
Chicago and Calumet River Railroad Company,
Chicago and Eastern Illinois Railway Company (Charles M. Thomson, Trustee),
Chicago and Erie Railroad Company,
[fol. 457] Chicago & Illinois Western Railroad,
Chicago and North Western Railway Company,
Chicago and Western Indiana Railroad Company,
Chicago, Aurora and Elgin Railroad Company (A. A. Sprague and Britton I. Budd, Receivers),
Chicago, Burlington & Quincy Railroad Company,
Chicago Great Western Railroad Company,
Chicago, Indianapolis and Louisville Railway Company,
Chicago Junction Railway (The Chicago River and Indiana Railroad Company, Lessee),
Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
The Chicago River and Indiana Railroad Company,
The Chicago, Rock Island and Pacific Railway Company,
Chicago Short Line Railway Company,
Chicago, South Shore and South Bend Railroad,
Chicago, West Pullman & Southern Railroad Company,
Elgin, Joliet and Eastern Railway Company,
Grand Trunk Western Railroad Company,
Illinois Central Railroad Company,
Illinois Northern Railway,
Indiana Harbor Belt Railroad Company,
Manufacturers' Junction Railway Company,
The Michigan Central Railroad Company (The New York Central Railroad Company, Lessee),
Minneapolis, St. Paul & Sault Ste. Marie Railway Company,
The New York Central Railroad Company,
The New York, Chicago and St. Louis Railroad Company,
The Pennsylvania Railroad Company,
Pere Marquette Railway Company,
Pullman Railroad Company, and
Wabash Railway Company (Walter S. Franklin and Frank C. Nicodemus, Jr., Receivers),
[fol. 458] defendants in the above entitled cause, now and at all times hereinafter saving and reserving to themselves all and all manner of benefit and advantage of exception

to the many errors and insufficiencies in the bill of complaint contained, and for answer thereto or unto such parts thereof as they are advised that it is material for them to answer, answering, say:

I

Answering paragraph 1 of the bill of complaint, these defendants admit the allegations therein set forth.

II

Answering paragraph 2, defendants admit the corporate existence of each defendant as is alleged in said paragraph and that the individuals named are trustees or receivers as set forth in said bill, and further admit and aver that each of the defendants and the lines of railroads named are common carriers engaged in the transportation of property in interstate commerce.

III

Answering paragraph 3, the defendants admit the purpose of the bill as therein set forth.

IV

Answering paragraph 4, these defendants admit that on May 11, 1927, the Interstate Commerce Commission instituted a proceeding as referred to therein, but deny that the [fol. 459] order of investigation was limited to an investigation of the interstate rates as is in said paragraph 4 set forth. These defendants allege that said order of investigation was as to the lawfulness of both the interstate and state rates within and between the States of Illinois and Indiana, respectively, in the Chicago switching district.

V

These defendants further allege that the Illinois Commerce Commission and the Public Service Commission (of Indiana) were notified of said investigation and co-operated and sat with the Interstate Commerce Commission at the several hearings had in regard to said investigation; that there were had several hearings before the Interstate Commerce Commission, the Illinois Commerce Commission and the Public Service Commission (of Indiana) sitting

jointly for the purpose of hearing testimony and receiving evidence on the subject matter of the general investigation, in which proceedings the plaintiffs named in said bill of complaint herein were parties. The Interstate Commerce Commission made and entered a report under date of July 31, 1931, which is referred to in paragraph 4 of the bill of complaint and is marked "Appendix A", and for full information as to its findings and requirements these defendants respectfully refer the court to said report and order. These defendants admit that on September 10, 1931, they filed their petition seeking appropriate findings and order authorizing and requiring them to establish the same switching rates found lawful and reasonable for interstate application to apply on intrastate commerce in the Chicago switching district within Illinois and Indiana.

[fol. 460]

VI

These defendants admit that on November 2, 1931, the Interstate Commerce Commission reopened the proceedings in Docket 19610 for further hearing with respect to the relation of the rates and charges for switching in intrastate commerce to the rates prescribed for like switching in interstate commerce.

VII

These defendants further admit that on December 28, 1931, complaint was filed by Acme Steel Company and others, as is alleged in said paragraph 4, and admit that said complaint was given Docket 24950 and was set for hearing at the same time and place as the further hearing in Docket 19610 as is alleged in said paragraph of the bill of complaint. These defendants admit that a proposed report was issued covering the further hearing in Docket 19610 and the hearing in Docket 24950 in one proposed report as is alleged, but aver that the proposed report, which is attached to said bill of complaint marked "Exhibit B", is incompetent, irrelevant and immaterial to the issues raised in said bill of complaint concerning the validity of the order of the Interstate Commerce Commission herein assailed. These defendants admit that exceptions were filed by the plaintiffs named in said bill of complaint and oral argument was had, and that the Interstate

Commerce Commission issued its report and order dated July 3, 1933, which report and order is referred to in said paragraph 4 of the bill of complaint and a copy thereof is attached to the bill of complaint, marked "Exhibit C", and for full information as to its findings and requirements these defendants respectfully refer the court to said report and order.

[fol. 461]

VIII

Defendants allege that in said proceeding, prior to the making, entering and serving of said report and order, the parties thereto, including the plaintiffs herein, were and each of them was accorded the full hearing provided for by law; that in said hearing voluminous testimony was taken and other evidence bearing upon the matters involved in said proceeding was submitted to and received by the Interstate Commerce Commission for consideration, including testimony and other evidence submitted on behalf of the plaintiffs herein; that at said hearings and subsequently both orally and in briefs filed in said proceedings, questions relating to the said matters were fully argued and submitted to the Interstate Commerce Commission for determination on behalf of said parties by their respective counsel, whereupon the said Interstate Commerce Commission determined said matters and made and entered its said report and order; that said report and order included the Commission's findings of fact, decision, conclusions and requirements in the premises and that upon the evidence aforesaid, and as shown in and by its said report, the Commission made findings and stated the conclusions upon which the said order is based.

IX

These defendants further allege that the findings and conclusions in said report were and are and that each of them was and is fully supported and justified by the evidence submitted in said proceeding as aforesaid; that in making said report and order the Interstate Commerce Commission considered and weighed carefully, in the light [fol. 462] of its own knowledge and experience, each fact, circumstance and condition contained in said evidence, including all material matters covered by the allegations of the bill of complaint herein; that said order of July 3,

1933, was not made and issued either arbitrarily or unjustly or contrary to the relevant evidence or without evidence to support it; that in making said order the Interstate Commerce Commission did not exceed the authority which had been duly conferred upon it and these defendants deny each and all the allegations to the contrary contained in the said bill of complaint.

X

Further answering paragraph 4, these defendants admit that the order of the Interstate Commerce Commission authorized and required them to establish for intrastate switching in the Chicago switching district within Illinois and within Indiana the same rates as are contemporaneously applied to interstate switching of carload freight within the Chicago switching district, and admit that on August 15, 1933, the plaintiffs herein filed with the Interstate Commerce Commission a joint petition for reopening said proceeding in Docket 19610 and Docket 24950 for further hearing, and admit that these defendants filed a joint answer to said petition as is alleged in said bill of complaint, and admit that the effective date of the rates to be published in compliance with said order was by the Interstate Commerce Commission postponed from September 20, 1933 to October 20, 1933. The defendants allege, however, that said petition of August 15, 1933, on behalf of plaintiffs, copy of which is marked "Appendix D" and is attached to said bill of complaint, and the joint answer of these defendants dated August 24, 1933, attached to [fol. 463] said bill of complaint and marked "Appendix E", are incompetent, irrelevant and immaterial to the issues raised in said bill of complaint concerning the validity of the order of the Interstate Commerce Commission.

XI

Answering paragraph 5, these defendants admit that the rates filed with the Public Service Commission (of Indiana) and the rates filed with the Illinois Commerce Commission, as is alleged in said paragraph, were suspended by the Public Service Commission (of Indiana) and the Illinois Commerce Commission, and aver that at the hearing before the Interstate Commerce Commission in Docket 19610, the said state commissions sat with the Interstate

Commerce Commission, and at such hearings the issues raised by the suspension of the state rates by the Public Service Commission (of Indiana) and the Illinois Commerce Commission were consolidated and heard jointly and on a common record before the three commissions that were considering the evidence in Docket 19610.

Defendants admit that under date of August 26, 1931, the Illinois Commerce Commission issued a report, and likewise on the same date the Public Service Commission (of Indiana) issued a report, which reports are attached to the bill of complaint and identified as "Appendix G" and "Appendix H", respectively. Said defendants aver that said reports and orders of the Illinois Commerce Commission and of the Public Service Commission (of Indiana) are incompetent, irrelevant and immaterial to the issues raised in the bill of complaint herein.

[fol. 464]

XII

Answering paragraph 6, these defendants admit filing tariffs with the Interstate Commerce Commission establishing the same basis of rates for switching service in intrastate commerce within Illinois and within Indiana as at the same time applied to interstate commerce within the Chicago switching district, and aver that the report and order of the Interstate Commerce Commission of July 3, 1933, plainly indicate the traffic on which said rates are to apply.

XIII

Answering paragraph 7, these defendants admit that a part of the evidence presented to the Interstate Commerce Commission in justification of the measure of what the rates within the Chicago switching district should be in the hearing in Docket 19610, prior to the Commission's order of July 31, 1931, consisted of a cost study. The defendants aver, however, that much evidence, in addition to the cost study, was offered and received with respect to said switching rates both state and interstate within the Chicago switching district. The protestants in Docket 19610, and related cases, including the plaintiffs herein, offered evidence in opposition to the said cost study, all of which evidence the Interstate Commerce Commission in making its

report and order of July 31, 1931, considered and weighed carefully and made its findings of fact and conclusions thereon.

XIV

Defendants aver that in the complaint in Docket 24950 the complainants, including the plaintiff herein, the Acme Steel Company, and the alleged fifty-seven other corpo- [fol. 465] rations, individuals and associations similarly situated, presented evidence concerning the cost study which the Interstate Commerce Commission had considered in its former report and order of July 31, 1931, 177 I. C. C. 669 (Appendix A attached to said bill of complaint). Said Docket 24950 was for the purpose of the report and order consolidated with Docket 19610 and is disposed of in the Interstate Commerce Commission's report and order of July 3, 1933, 195 I. C. C. 89 (Exhibit C attached to said bill of complaint).

XV

Answering paragraphs 8, 9, 10, 11 and 12 of said bill of complaint, these defendants deny each and every allegation in said paragraphs contained, and further answering the allegations of said paragraphs these defendants expressly deny that the Interstate Commerce Commission was without power to enter the said order and deny that said order was or is invalid or unlawful or void or resulted in unlawfully increasing any intrastate rates for the reason asserted in any of said paragraphs or for any other reason. On the contrary, these defendants allege and aver that said order is a valid exercise of the power duly and lawfully conferred upon the Interstate Commerce Commission; and that in making and issuing said order the said Commission observed all the requirements of the law applicable to an order and proceeding such as there involved; and in and by said report the Commission in the exercise of the exclusive administrative powers conferred upon it by the Interstate Commerce Act found and determined from the voluminous evidence before it that the intrastate rates on switching within the Chicago switching district within Illinois and [fol. 466] within Indiana, in order to remove and to prevent unjust and unreasonable discrimination of the interstate rates by the state rates, should be not less than the rates contemporaneously applied by said defendants for interstate

switching service between points in the Chicago switching district. Defendants further aver that the evidence fully supports the findings, conclusions and order made by the Interstate Commerce Commission.

XVI

Answering paragraph 14, these defendants admit that they have filed with the Illinois Commerce Commission and with the Public Service Commission (of Indiana), to the extent that their lines operate within those respective states within the Chicago switching district, tariffs cancelling the intrastate rates, and have filed with the Interstate Commerce Commission tariffs containing rates in conformity with the order of the Interstate Commerce Commission of July 3, 1933. These defendants further admit that traffic will continue to move in intrastate commerce within the Chicago switching district in Illinois and Indiana as is alleged in said paragraph, and that on such traffic the increased rates required and ordered by the Interstate Commerce Commission for application to state traffic within the Chicago switching district in Illinois and in Indiana will be paid by the shippers and collected by the carriers. Further answering said paragraph, these defendants deny each and every allegation in said paragraph contained not heretofore admitted, answered, or denied.

[fol. 467] XVII

These defendants aver and allege that the bill of complaint does not contain either statements or allegations of fact which entitle plaintiffs to a preliminary or interlocutory order or injunction restraining and suspending the enforcement, operation and execution of the said order of the Interstate Commerce Commission until final determination of this cause, or, upon the final hearing herein, to a decree perpetually enjoining, suspending, annulling and setting aside the enforcement, operation and execution of said order. These defendants further aver and allege that the bill of complaint does not contain either statements or allegations of fact which show that the order of the Interstate Commerce Commission causes the plaintiffs, or any of them, or will cause said plaintiffs, or any of them, such legal injury as entitles them to maintain this suit.

XVIII

Except as herein expressly admitted, these defendants deny each and all of the allegations contained in the bill of complaint in so far as they conflict either with the allegations herein or with either the statements or findings of fact included in said report and order of the Interstate Commerce Commission dated July 3, 1933, which report and order are hereby referred to and made a part hereof.

All of which matters and allegations, these defendants are ready to aver, maintain and prove as this Honorable Court shall direct.

Wherefore, these defendants pray that the relief prayed for in said bill of complaint be denied and that said bill of [fol. 468] complaint be dismissed at the cost of the plaintiffs.

Defendant Carriers named above, by J. N. Davis, One of Their Solicitors. H. I. Allen, J. R. Barse, D. P. Connell, J. N. Davis, P. F. Gault, Walter McFarland, H. D. Sheean, E. A. Smith, James Stillwell, Solicitors for Defendant Carriers.

Duly sworn to by J. N. Davis. Jurat omitted in printing.

[fol. 469] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 13507

ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION (OF INDIANA), Board of Trade of the City of Chicago, and Acme Steel Company, Plaintiffs,

vs.

UNITED STATES OF AMERICA, THE ALTON RAILROAD COMPANY et al., Defendants

Narrative Abstract of Evidence and Proceedings Before I. C. C.

Lodged Jan. 23/33.
Filed Feb. 12, 1934.

[fol. 470] Abstract of evidence in the following proceedings before the Interstate Commerce Commission:

Docket No. 19610, being a general investigation ordered by the Commission upon its own motion;

Docket No. 20006 entitled "Illinois Slag & Ballast Company vs. Chicago, West Pullman & Southern Railroad Company et al.," and

Investigation & Suspension Docket No. 2900;

All of which said proceedings were consolidated for the purpose of hearing and disposition; and by agreement of parties entered of record at the respective hearings, the testimony taken in said consolidated proceedings was to be the testimony in each and all of said proceedings, so far as the same might be applicable to the respective cases.

By agreement of the parties and with the approval of the court, the original exhibits in said proceedings will be sent up, duly certified, and are not abstracted herein other than to refer to the number and the description thereof as offered and received in evidence.

[fol. 471] At a hearing in the above entitled consolidated proceedings, held at Chicago, Illinois, January 11, 1928, before Honorable J. B. Campbell, a member of the Interstate Commerce Commission, and Howard C. Faul and W. B. Wilbur, examiners thereof, with whom sat Messrs. H. M. Slater, K. E. Tholin and W. T. Taylor of the Illinois Commerce Commission, for the purpose of hearing Docket No. 17513, Illinois Slag & Ballast Company v. Chicago, West Pullman & Southern Railroad Company, et al.; Docket No. 17250, Illinois Commerce Commission v. Atchison, Topeka & Santa Fe Railway Company, et al.; and Docket No. 17269, Illinois Commerce Commission v. Chicago & Eastern Illinois Railway Company, et al., pending before the Illinois Commerce Commission and involving intrastate rates within and to and from the Chicago switching district; and H. S. McNeely of the Public Service Commission of Indiana, for the purpose of hearing Docket No. 8939, pending before that commission and involving intrastate rates within that portion of the Chicago district within the State of Indiana, moving wholly within Indiana; with the understanding that the testimony and evidence taken in the three interstate commerce proceedings set forth in the caption hereof should likewise be considered as taken in the four cases above referred to, pending before the two state commissions respectively, and

constitute the record in said state proceedings so far as pertinent, and that the appearances taken in the interstate proceedings above referred to should be considered the appearances in the state proceedings; and at said hearing [fol. 472] before the Interstate Commerce Commission in the cases pending before it, the witnesses hereinafter named were called and presented in behalf of the respondent railroads in the order in which their names appear, and under oath testified in substance as follows:

E. F. Saur

I am a special agent of the Pennsylvania Railroad with forty years of service embracing work in all different departments, the last twelve of which have been devoted to studies, the preparation of exhibits, and giving testimony in defense of rate cases before interstate and state commissions. (Tr. 1, 22, 23.)

The railroads are making a study of switching in the Chicago district to determine the average cost of switching cars between points therein, separated as between one-line, two-line and three-line hauls, and as to commodities according to the Commission's commodity classification of freight tariffs. (Tr. 23.)

To make the study a committee was appointed, originally the representatives of seven railroads, which made the traffic analysis covered in exhibits submitted at the February 16, 1927, hearing. (Tr. 23.) The committee was subsequently changed to eight representatives from eight selected Chicago railroads, to make cost studies, and later seven additional representatives of Chicago railroads were [fol. 473] added to that committee. Since the beginning I have been chairman of the cost committee, which now includes representatives of fifteen railroads. (Tr. 24.) We had a formula by which we made the cost studies, but the study is not yet complete. (Tr. 24.) Some preliminary work has been done and put in the form of an exhibit. The fifteen study railroads included in the exhibit (hereinafter referred to as "Ex. No. 1, Witness Saur") include the original eight, the Burlington, the North Western, the Milwaukee, the Pennsylvania, the Indiana Harbor Belt, the Baltimore & Ohio Chicago Terminal, the Belt Railway, and the Elgin, Joliet & Eastern; and the seven added roads are the Illinois Central, the Rock Island, the Chicago & In-

diana Western, the Chicago Short Line, the Chicago, West Pullman & Southern, the Illinois Northern, and the Pullman Railroad. (Tr. 24-25.) The traffic analysis of district movement covered the month of September, 1926, showing nearly 34,000 cars handled by 30 railroads. (Tr. 25.)

The eight railroads originally selected handled approximately two-thirds of those cars, using cars originating thereon. It was believed that a traffic study of those roads would be representative, but subsequently the study indicated that it would not be representative, because of the dropping of two-line and three-line haul cars handled by non-study railroads, and hence the adding of the seven additional roads. (Tr. 25.) An exhibit has been prepared, covering details of station clerical costs, which was offered and received in evidence as "Ex. No. 1, Witness Saur." (Tr. 26.)

The exhibit shows the fifteen roads alphabetically, with detail of the charges by primary accounts of each, on account of the operation of each of the stations on each road [fol. 474] within the switching district, with the number of consignments during the test period. The quotient is naturally the clerical cost at that station per consignments, and will be used wherever the car involved any of these station costs. It will be the particular station costs that are involved in the originating and delivering of the car.

There has been prepared an exhibit which deals with the engine-hour costs. It is "Ex. No. 2, Witness Saur." (Said exhibit offered and received in evidence.) (Tr. 27.)

In like manner this exhibit sets up by primary expense accounts the charges for the test period for the respective railroads arranged alphabetically, with net engine hours worked during the test period and costs per engine hour for each of the primary accounts. (Tr. 27.) The roads are arranged in this exhibit in the same alphabetical order as in Ex. No. 1.

There has been prepared an exhibit showing costs per car day for freight train car repairs, etc. It is "Ex. No. 3, Witness Saur." (Said exhibit offered and received in evidence.) (Tr. 28.) This exhibit is a composite statement prepared under the formula specifications as to primary accounts involved in calculating costs per day for car detention, which includes only nine trunk line roads involved in the study, as switching roads own very little equipment.

The committee concluded that the fair rate to develop for this purpose would be the composite rate shown in said exhibit, with the understanding that each trunk line would use its individual cost for its single-line haul movements, but for two-line, three-line and all movements of other railroads the composite figure of 64 cents per day would be used. (Tr. 28-29.)

[fol. 475] There has been prepared an exhibit that deals with the summary of output per engine hour. It is "Ex. No. 4, Witness Saur." (Said exhibit offered and received in evidence.) Tr. 29.) The formula provides for the separation of switching service between 12 different elements, the names of which fairly indicate the service which they cover.

Ex. No. 4 is arranged as to roads in alphabetical order, showing result of all the service in connection with each one of the elements of service involved. There is an omission between 5 and 10 of services because, though productive services, they are non-revenue services, such as switching to coal docks, repair tracks, occasional service performed for maintenance of way department, and incidental passenger switching. (Tr. 29-30.)

To undertake to state those four services in terms of cost per car would mean absolutely nothing. But such services are enumerated and the average number of cars handled per hour, with the cost per engine hour taken from Ex. No. 2, and the cost per car, has been developed for each of these general elements of service. (Tr. 30.)

The formula upon which we worked is "Ex. No. 5, Witness Saur." (Said exhibit offered and received in evidence.) (Tr. 30.)

Cross-examination by Mr. Tholin, representing Illinois Commerce Commission:

In applying or using the figures in Ex. No. 4 we show, in Ex. No. 2, how the engine-hour costs were built up. Under the specifications of the formula a report was received from each conductor that worked each day during [fol. 476] the test period, in which he separated the time and the cars involved as to his service during his tour of duty, in each of these different elements of service. (Tr. 31.) At the close of the test period these conductor reports were summarized as to the 12 different elements, so that

the first figure that will always appear there for the classification for the road in question will mean that the figure shown in the average number of cars handled per engine hour, cost per net engine hour and the cost per car, and the average cost per car for that element of switching service, and the same all through all of the different elements of service indicated. (Tr. 32.)

The application of those figures will be that for each car that moved over one or more of the study roads during the month of September, 1926, the exact units of service that were furnished will be segregated; that costs for each car or for each group of cars that received the same units of service will be worked into an exact unit, so that the final result will show for the roads as a whole the average cost for one-line hauls, two-line hauls and three-line hauls, further segregated as between the 69 I. C. C. commodities and the total. (Tr. 32.) Element No. 1 shown in Ex. No. 4 as to the B. & O. C. T. Railroad Company, classification of which shows a cost per car of 51.8 cents, will not be applied as the classification cost to every classification movement of a car handled on the B. & O. C. T. We will apply the individual classification cost that it is proper to apply. This figure is merely the average of all of the classification costs on that railroad. (Tr. 33.) We will apply the classification costs in a particular yard that it is proper to apply to the particular car or group of cars that were studied. The averages shown in Ex. No. 4 will [fol. 477] not be used at all in the compilation of the other exhibits. They will be based upon the detailed figures that are behind these averages. (Tr. 33.)

Redirect examination by Mr. Davis, for respondent railroads:

The Saur-Coverston formula referred to by the Interstate Commerce Commission in its order dated July 19, 1927, is the same as the formula introduced as Ex. No. 5. (Tr. 33.)

The respondents having no further witnesses to offer at said hearing, the hearing was postponed until a further assignment thereof by the Commission. (Tr. 33-35.)

At a further hearing on said consolidated proceedings held at Chicago, Illinois, May 15, 1928, E. F. Saur was

recalled in behalf of the respondent railroads.

(Before interrogating the witness Mr. Davis, representing the respondents, offered the following exhibits:—

Ex. No. 6, a map of the Chicago switching district, showing in red the rail lines subject to cost study; Ex. No. 2-A, being an amendment to details of engine-hour costs, C. B. & Q. Railway, pages 8 and 9; and Exs. Nos. 7 and 8. All of said exhibits were received in evidence. (Tr. 51-52.) (Abstractor.))

I testified in this proceeding on January 11, 1928, and at that hearing filed five exhibits. Exhibits Nos. 7 and 8 show the result of my cost studies, the first within the Chicago district and the other from Chicago Heights to Chicago district. These exhibits are offered as of this date because the original order of the Interstate Commerce Commission of October 25, 1926, in Dockets I. & S. Nos. 2780, 2658 and 2713, called for traffic analysis indicating the longest, the shortest, and average haul of iron and steel articles in the Chicago district, separated between one-, two- and three-line hauls, showing tonnage, ton miles [fol. 478] and revenue. This information was furnished in Exs. 1 and 2 introduced in the hearing held February 11, 1927. (Tr. 52-53.)

Said exhibits covered all the information required by the Commission and reflected the same information as to all commodities in a similar manner to that required by the Commission's order for iron and steel articles; and the Commission supplemented its order by a request that similar data be shown for all other carload commodities. (Tr. 53.) By an order issued by the Commission, dated May 25, 1927, in Dockets No. 19610 and I. & S. 2900, it required cost study to be made of the switching business within the Chicago district and between Chicago and Chicago Heights districts. It also required a resubmission of Exhibits 1 and 2 offered in No. 2780 and related dockets, which analyzed all other commodity groups between the Commission's 69 commodity classifications. (Tr. 53-54.) The Chicago & North Western, the Chicago, Milwaukee, St. Paul & Pacific, the Chicago, Burlington & Quincy, and the Pennsylvania trunk line roads, and the Belt Railway, the Baltimore & Ohio Chicago Terminal, the Indiana Harbor Belt, and the Elgin, Joliet & Eastern, as switching roads, were

selected under the orders of May 25 and July 19, 1927. (Tr. 54.)

The second Commission order, dated July 19, 1927, indicated, in accordance with the carriers' desires, that the test week should be from August 4 to August 10, 1927, for the railroads previously named, using the Saur-Coverston formula. Subsequently the Illinois Central Railroad and the Chicago, Rock Island & Pacific Railway were included for one-, two- and three-line hauls, and the Chicago Short Line, Chicago & Illinois Western, the Chicago, West Pull-
[fol. 479] man & Southern, the Illinois Northern, and the Pullman Railroad for two- and three-line hauls. This necessitated a second test period, which was conducted in October, 1927. (Tr. 54.)

The periods of study, namely, one week on each railroad, were made during that part of the year 1927 between June and October, the exact periods being shown in Ex. No. 7, page 1. (Tr. 55.) During the test period these roads handled an aggregate of 63,586 cars per day, while for the calendar year 1927 they handled an average of 62,460 cars per day, a difference of about 2 per cent. It would be hardly possible to select three different study periods on 15 railroads that would reflect so nearly a normal or average showing. To the traffic moved during September, 1926, shown in Exs. Nos. 1 and 2, Docket I. & S. 2780, et al., for the 15 railroads concerned in this study, we applied the costs developed in accordance with the formula based on the test period of 1927. The formula used in the switching cost study is Ex. No. 5. On page 9 is the fundamental principle of the formula, following the list of 12 general elements of service, all subject to further division into sub-elements, reading as follows: "To ascertain the cost of a given kind of switching service in any terminal it is necessary first to determine the average cost per car for each of the foregoing elements of service, and second to know what different elements of service are given to the cars under review." (Tr. 55-56.) Eleven hundred eighteen conductors out of about 2,000 switching crews working per day in the Chicago switching district reported for a seven-day period, and the total number of units of cost so developed were 4710, of which 2332 were used to develop 6510 different combinations of units designated as index num-
[fol. 480] bers. (Tr. 56.) Ex. No. 7 shows the final re-

sults. The unit costs were applied to 11,959 single-line haul cars, 11,492 two-line hauls, and 2,735 three-line hauls, total 26,186 cars.

There are four general divisions of costs, towit, platform, clerical switching and car detention. The Chicago study covers carload freight only, hence no computations were made as to platform costs. Account 373—Station Employes—includes platform and clerical expense, and it was necessary, in determining the clerical costs, to separate Account 373 between platform and clerical expense on the basis of cost of each class of service. (Tr. 56.) A blank form shown on page 43 of the formula provides for each employe to actually record a separation of his services during the one-week study period, and on page 45 of the formula is a blank for a recapitulation of this data, or for the separation of the expense as between platform and clerical, where the payrolls themselves make the necessary separation. The specifications as to specific accounts and their apportionment are shown on page 7, and on page 59 is the form used to bring together the correct proportion of each of the selected accounts for each station involved in the study. (Tr. 57.)

The detailed results in applying these specifications at each station in the Chicago district on each of the 15 study railroads are shown in Ex. No. 1. The average of all of the 98 stations shown in this exhibit is 46.76 cents per consignment. (Tr. 57.) The second factor of switching cost, and instructions regarding it, are on page 9 of the formula. Pages 11, 13, 15 and 17 of the formula detail the specifications for the specific accounts included in engine-hour cost, with the bases of apportionment. The recorded facts [fol. 481] for each engine-hour cost were tabulated on the blanks shown on pages 61 and 63. (Tr. 57-58.) Sixty-seven disbursement accounts are prescribed in the formula, but in the cost study the three belt lines and five industrial roads in Chicago were performing exclusively, or substantially exclusively, carload switching service, and there was an opportunity to develop a 100 per cent engine-hour cost by inclusion of all disbursement accounts affecting engine-hour costs. (Tr. 58.) Comparing these costs with those developed on the same railroads on the formula basis, it appears that on the Belt Railway, the Baltimore & Ohio Chicago Terminal, and the Indiana Harbor Belt the for-

mula basis produced 90.8 per cent of the total cost, and on the five industrial roads the formula produced 91.2 per cent. A combination of the result of the eight roads produced 90.8 per cent. (Tr. 58.).

The results obtained by the formula on the seven trunk line roads were expended by this percentage figure and the results of all of these are reflected in Ex. No. 7. The Chicago, Burlington & Quincy, the Chicago, Milwaukee, St. Paul & Pacific, and the Illinois Central each developed two engine-hour costs, and the Indiana Harbor Belt and the Pennsylvania three. The average of the 22 engine-hour costs on the 15 roads is $14.55 per hour. (Tr. 58-59.)

On page 19 of the formula are the specifications for developing cost per car per day for detention. The basic data and the methods for developing average cost per day on 9 trunk line railroads, and the totals, are shown in Ex. No. 3. (Tr. 59.)

Seven of the 9 railroads are study roads. The Baltimore & Ohio and the New York Central were included because of their respective relationships to the Baltimore & Ohio Chicago Terminal and the Indiana Harbor Belt. The [fol. 482] three belt lines and the five industrial roads have practically no freight train car equipment and have no facilities for making heavy repairs, and these eight roads make only minimum repairs on cars handled in the switching service. (Tr. 59.) It would be manifestly unfair to use formula specifications to develop the per-day cost for car detention on these eight railroads. Hence, on single-line hauls on the seven trunk lines, the per-day car detention cost on those lines was applied, and for all other cars the average of .64352 (Ex. 3) was used. (Tr. 59-60.) Form 6-A, developed for use in the Chicago study, is an elaboration of Form 6 shown on page 51 of the formula. From the traffic test records of cars moved in September, 1926, the necessary information was abstracted covering 26,186 cars, as shown in Ex. 7, giving the date and hour at which each car was assigned and its release for other service. Form 6-A provided for a reference to designated index number. This is merely grouping together the different units of service performed by each railroad in handling a car between each two industries involved, including proper number of empty movements prior or subsequent to the load. (Tr. 60.)

The locomotive performance for the test period and the cars handled by each in the 12 classes of service were reduced to an average number of cars per hour for each element of service covered in the 12 classes of service. To these elements, as represented by average cars per hour, were applied the respective engine-hour costs, developing the cost of each element. The combination of these costs was then made in accordance with the index number, grouping all elements, thus producing the cost of each index number. (Tr. 60-61.) For single-line hauls the index number [fol. 483] covers all elements furnished, but for two- and three-line hauls the index number of each railroad shows the total cost of the part of the movements that each performed between any two industries in the Chicago district. This made it possible to show for each of the 26,186 cars grouped by commodities the exact units of switching service furnished. (Tr. 61.) The proper clerical costs were likewise charged to each index number, one-line hauls having an originating and terminating clerical cost on one railroad. Two- and three-line hauls had an originating or terminating cost for each originating or terminating railroad. Intermediate railroads did not charge clerical costs excepting where cars were rebilled by the intermediate carrier.

Car detention time was developed by commodity groups from Form 6-A for one-line, two-line and three-line hauls, and to the total was applied the car detention rate as developed in Ex. 3. Through the various steps described we have obtained the total cost by commodity groups for one-, two- and three-line hauls as reflected in Exs. 7 and 8. These two exhibits, the latter embracing the Chicago Heights-Chicago movement—the preparation thereof having been made in the same manner as the Chicago district movements reflected in Ex. 7—show the various average costs per car and per 100 pounds. (Tr. 61-62.) Ex. 7 contains final results for one-line, two-line and three-line hauls. Ex. 8 is shown as two-line, three-line and four-line hauls, because in Chicago Heights there is a railroad known as the Chicago Heights Terminal Transfer Railroad. It performs practically all of the industrial service, for which it is paid $6.00. No cost study was made on that railroad, but in developing the cost indicated in the exhibit, that $6.00 cost was added. It appeared to be more in harmony to call

[fol. 484] the service two-, three- and four-line hauls rather than to call it one-, two- and three-line hauls plus the service of this switching road. (Tr. 63.) In Ex. 7 the one-line cost, in cents per 100 pounds, is shown as 1.9 cents. The two-line cost is 2.31 cents and the three-line haul is 2.58 cents.

In Ex. 8 the cost in cents per 100 pounds for two-line haul is shown as 2.59 cents; three-line as 3.09 cents, and four-line as 2.85 cents. (Tr. 63.) These costs are understated:

First: Because no allowance for increased costs of winter operation. Checking the operating results indicates 14 per cent less cars were handled per engine-hour and 13 per cent more locomotive fuel was used per month during December, January and February than during the other nine months of the years 1925, 1926 and 1927. (Tr. 63-64.) At Potomac Yard, near Washington, D. C., average engine-hour cost for 1926 was $13.72; for the month of August, 1926, was $12.99, as developed by the same formula used in the Chicago study; indicating that winter cost spread over the entire year increases summer cost 5.62 per cent. (Tr. 64.) I know from my own knowledge and experience that the operating conditions in Potomac Yard are much more favorable during the winter months than in Chicago.

Second: Upward trend of railroad operation costs. The cost figures include 1927 wages for certain classes of employes. Other increases granted and pending are not reflected in the 1926 costs which were otherwise used.

Third: No allowance for cost of transporting locomotive fuel on trunk lines. The trunk lines covered by the Chicago study get their locomotive fuel from their own mines. The Commission's classification of disbursement accounts [fol. 485] makes no provision for adding the cost of transporting company coal over their own lines. (Tr. 64.) These figures were not available to our committee. It inevitably follows that if these figures had been available, our cost figures would have been increased. The belt lines have assigned no cost for distributing coal to their various coaling stations. (Tr. 65.)

Fourth: Operating ratio. The order of the Commission states that the costs to be shown are to be those rep-

resentative of service in the Chicago district. Applying to these cost figures the operating ratio suggested in the formula in Ex. No. 5, 66.67 per cent, will produce the following rates in cents per 100 pounds: One-line haul, 2.85 cents; two-line haul, 3.46 cents; three-line haul, 3.87 cents. The operating ratio of 66.67 per cent suggested by the formula was used because that ratio received the approval of the Commission in certain cases, and particularly that in I. and S. Docket 965. We believe, however, that this ratio is too high to give the carriers a proper return. (Tr. 65.) From data on file with the Commission it appears that the railroad revenue dollar received in 1926 was expended in the following manner: For labor, 43 cents; locomotive fuel, 6.3 cents; material and supplies, 18.7 cents; loss and damage, personal injury, insurance; depreciation on returns, 5.2 cents; taxes 6.1 cents; joint facility rents, 1.7 cents. (Tr. 66.) This would leave 19 cents to pay interest on investment and dividends. This would have made a return to the railroads as a whole for 1927 of 4,4 per cent. A rate of return of 5.75 per cent is allowed by the Commission. To earn this percentage, and applying the same to these figures, would make an operating ratio for all the railroads of 67.4 per cent, approximating the ratio suggested in the formula. (Tr. 66.)

[fol. 486] On much greater investment per mile of road within the terminal limits, the proper operating ratio applicable to terminal operations must be materially less. (Tr. 66.) The average tax valuation per mile of road for the trunk lines included in the cost study in Cook County is five times the tax value per mile of road outside Cook County in the State of Illinois, and on a side-track basis only is ten times greater. (Tr. 67.) As a result of these studies, it would appear that the rates proposed have been justified and in fact could be higher. For example, we have shown that the costs have been understated to the extent of at least 10 per cent due to the fact that the cost studies included only summer operation and do not reflect the higher costs which are inevitable during the winter months. Furthermore, the cost study does not take into account the cost of transporting company fuel over the trunk lines because the Commission's accounting rules do not provide for the separation of these costs. It is also a fact that the trend in railroad operating costs is continu-

aly upward. Furthermore, we have shown that the operating ration of 66.67 if applied to the ascertained costs would not produce a rate which would give the carriers a fair return for these terminal services. During the field-work representatives of the Commission and of Mr. Oliver were present observing conditions, methods, etc., employed by the carriers. The details of this study have been available and have been used by Mr. Oliver in analyzing and selecting data for use in this case by the shippers. (Tr. 68.)

Cross-examination by Mr. Walter, representing shippers:

The engine-hour cost, $14.55, I took from Ex. 2 and simply used the figures shown there, and it includes whatever may be added by reason of the 90.8 ratio shown on page 5 to the extent that the belt line roads which did make 100 per cent costs have shown that to be their engine-hour cost; and to the extent that the trunk line roads did not add it in Ex. No. 2 the 90.8 per cent ratio adds nothing to such engine-hour cost. (Tr. 69.) I would not be able to say what that figure should be to give effect to the less than 100 per cent ratio on certain of the roads. I merely set that figure up to arrive at something like an average of the results as indicated by Ex. 2. (Tr. 69.)

[fol. 487] By Mr. Cardy:

The two-line costs from Chicago Heights of 2.59 cents per 100 pounds includes the tariff rate of the Chicago Heights Terminal Transfer Railroad Company. (Tr. 69.) It was included as an item of expense, no cost study having been made on that railroad. To determine a one-line movement I would deduct that $6.00. Applying the 67.4 per cent operating ratio in figuring ultimate cost, I applied that to the $6.00. It was applied to the entire cost shown. (Tr. 70.)

By Mr. Keene:

The freight charges that the belt line roads pay for company fuel are included in the cost of locomotive fuel, but there is no cost in the figures for the distribution by those roads of their own company fuel over their own railroads. (Tr. 70.) That would be relatively small as compared with

the cost to the trunk lines of transporting their company fuel. (Tr. 71.)

In stating that operating costs are on the increase I did not have in mind operating costs per unit of service. What I had in mind was the costs themselves. (Tr. 71.)

(Mr. Davis, representing respondent railroads, offered the exhibit numbered No. 1 in I. and S. Docket 2780 as Ex. No. 9 in this proceeding, and the exhibit numbered No. 2 in said I. and S. Docket 2780 as Ex. No. 10 in this proceeding, and a bound exhibit was offered as Ex. No. 11, to be presented as a part of the testimony of the witness G. F. Vivian. Said exhibits were then marked as "Exs. Nos. 9, 10 and 11, Witness Vivian," respectively, and received in evidence. (Tr. 76.) (Abstractor.)).

G. F. VIVIAN was sworn and testified as follows:

[fol. 488] Direct examination by Mr. Davis, representing respondent railroads:

My name is G. F. Vivian, and I am a statistician of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company. (Tr. 76.) I have been a member of the cost study committee that has been working with Mr. Saur from its inception. I prepared the exhibit which has been marked Ex. No. 11. In the hearing on February 11, 1927, in Docket I. and S. 2780 and related cases, Mr. Galligan introduced exhibits Nos. 1 and 2, which in this case have been numbered 9 and 10. These exhibits show iron and steel articles, other commodities, and total divided as to one-, two- and three-line hauls, with a further analysis on pages 4, 5, 6, 7 and 8 of details by railroads shown in Ex. 9. Compliance with the Commission's notice of May 25, 1927, required the re-analysis of the information contained in exhibits Nos. 9 and 10 for all the other commodity groups, and the results of that re-analysis are shown in Ex. No. 11, together with the first portion of Exs. Nos. 9 and 10 dealing with iron and steel articles. The re-analysis separates the information in Exs. Nos. 9 and 10 among the Commission's 69 commodity groups. (Tr. 77.) These exhibits show the average haul of all commodities on one-, two- and three-line hauls. The average haul for one line is 11.3 miles; for

two lines, 22.10 miles; and for three lines 26.4 miles. The average loading for one-line hauls is 40.5 tons; for two-line, 39.9 tons; and for three-line 42 tons. The average revenue per ton for one-line is approximately 43 cents; for two-line, 53 cents; and for three-line, 69 cents. We have included in this re-analysis of all other commodities the traffic moved in switching service by the Elgin, Joliet & Eastern Railway. (Tr. 78.)

[fol. 489] Cross-examination by Mr. Walter, representing shippers:

The average haul stated by me was for the ton and not on the car. The average haul per car is slightly less than in the case of one-line, two-line and three-line hauls. The figures include movements from the Elgin, Joliet & Eastern, but only on its switching business, not road-haul business, such as from Gary, Joliet and Waukegan. I could not differentiate between the switching business and the road-haul business of the Elgin, Joliet & Eastern. That road would have to do that. We asked them for the switching business involved in the territory which was under agreement. Roughly I believe the territory included movements between Gary and the Chicago switching district, between Chicago Heights and Gary, and between Chicago Heights and the Chicago switching district. (Tr. 79.) It would include a local movement on that road in Gary and in Chicago Heights if they had any such movement. It would include movements on the Chicago Heights Terminal now operated by the Chicago & Eastern Illinois. The switching figures of the E. J. & E. do not include any traffic in Waukegan or from Waukegan. If you take the total number of cars shown on these pages for the respective one-, two- and three-line hauls, and compare that number with the total number of cars shown in the cost study, you will get the percentage relation to the total. No cars in my Ex. No. 11 were moved in switching service as a part of the line-haul movement, and no line-haul cars were included in the cost study. (Tr. 80.)

By Mr. Tholin, of the Illinois Commerce Commission:

The Elgin, Joliet & Eastern cars were distributed by com-
[fol. 490] modities in this statement.

Redirect examination by Mr. Davis, representing respondent railroads:

Cars moving between Chicago Heights and Chicago are included.

Recross-examination by Mr. Tholin, of the Illinois Commerce Commission:

I could not say that the figures as to Elgin, Joliet & Eastern switching includes intra-plant switching within the Illinois Steel Company in Gary, because I believe that business was kept separate and not reported under the local to Gary or local Gary, being, as I understand it, from one industry to another. (Tr. 81-82.)

J. B. Hamilton was sworn and testified as follows:

Direct examination by Mr. Davis, representing respondent railroads:

I have had twenty-one years of railroad experience with the Illinois Central Railroad; and am now a train master. (Trans. 82-83.) I have had experience in train operation during winter months as compared with summer months, and there is considerable difference in the winter months' operation. Winter weather conditions require more power for handling the same business than in the summer. It is not possible to handle as many cars per engine hour in the winter or the severe months as in the summer. Oil and grease in the journal boxes become stiff; cars will not roll [fol. 491] as well in severe weather, which requires reduction in the number of cars per train; it is more difficult to start trains because of the additional adhesion. (Tr. 83.) Trains must be shoved out of the yard to get them started or warmed up. In transfer work or road-haul movement cars standing during severe weather get stiff and are harder to start. (Tr. 84.)

In yard operation, particularly in a hump operation, cars must be pulled back and run up and down the track to get warm so they will move over the incline. This movement is not required in summer. (Tr. 84.)

In snow storms it is particularly difficult. Operations are retarded; switches become clogged with snow, which requires the use of engines at different times, forcing steam between the switches to thaw them out. (Tr. 84.)

Snow storms or sleet storms slow down the passing of signals; smoke and steam from the engines hang a great deal lower in subzero weather. The human element is also involved. The men are looking for a warm place as much as they can, and trying to get it. (Tr. 84.)

The conditions described I have experienced in Chicago every winter. (Tr. 85.)

Cross-examination by Mr. Walter, representing shippers:

I do not know the average mean temperature in January in Chicago for any particular year. It has been considerably below zero during every winter that I have been here. (Tr. 85.) I do not want to make it appear that Chicago has a zero temperature all during the month of January, but I would like to make it appear that it is a pretty cold place. [fol. 492] It is also hot in the summer time. The men do not move faster in cold weather than they do in the summer time. They move a little faster toward a stove. They are either moving faster to get the work through quicker, or let the time go by for their eight hours. Wind furnishes considerable trouble in the handling of freight. (Tr. 86.) Wind pressure is an element in handling freight in a hump yard. Wind blows both winter and summer, and there is a certain amount of retardation in the wind, naturally, against a car. The hump is raised somewhat in the winter, about 12 inches, to give a greater incline. I cannot say that it is not the fact that the volume of cars handled—that is, the lading—varies with the seasons, and that it affects unit cost of handling more than the weather conditions referred to by me, nor can I say that it is. (Tr. 87.)

By Mr. Cardy:

Our peak month of traffic is in October. From then on it drops off until March, which is a rather heavy month. A very large volume of coal moves during the winter months through the Chicago District. (Tr. 88.)

G. J. SHREVE was sworn and testified as follows:

Direct examination by Mr. Davis, representing respondent railroads:

I am general superintendent of the Belt Railway Company of Chicago, and have had thirty-three years of operating experience with that company. (Tr. 89.) My testimony would be practically the same regarding winter operations as compared with summer, as that given by Mr. Hamilton; [fol. 493] but I would also say that the locomotives are not as efficient in cold weather as they are in the summer time, in starting trains, due to the cylinder walls being cold causes steam to condense more rapidly than it does in the summer time. With this addition I adopt the testimony given by the witness Hamilton. (Tr. 89.)

Anticipating these winter conditions we get our tracks in a high state of maintenance before the weather takes the turn. We begin the work the latter part of October and continue into November. (Tr. 90.)

R. A. BARLOW was sworn and testified as follows:

Direct examination by Mr. Davis, representing respondent railroads:

I am train master of the Baltimore & Ohio Chicago Terminal Railway Company; have had thirty-five years' operating experience with that railroad, twenty-six years in the Chicago district. (Tr. 91.) I heard the testimony of Mr. Hamilton and Mr. Shreve, witnesses who preceded me. I adopt their testimony as my own, except add that the snow and sleet interfere terribly with our interlocking plants. It is difficult to keep them open and the trains and engines moving. (Tr. 92.)

A. R. PELNAR was sworn and testified as follows:

Direct examination by Mr. Davis, representing respondent railroads:

I am assistant to the general manager of the Chicago [fol. 494] & Northwestern Railway. Have had thirty years'

operating experience in winter and summer months. I heard the testimony of Mr. Hamilton, Mr. Shreve and Mr. Barlow, who preceded me, and have nothing to add to their testimony regarding comparison of operations between winter and summer months, and adopt their testimony as my own. (Tr. 93.)

Cross-examination by Mr. Walter, representing shippers:

We know what weather does, and we prepare to meet it. (Tr. 93.)

C. W. GALLIGAN was sworn and testified as follows:

Direct examination by Mr. Davis, representing respondent railroads:

I am chairman of the Illinois Freight Association. I have prepared a statement outlining the issues in this case covering the switching rates in the Chicago district. The matter involved in this proceeding grew out of the Commission's decision in docket I. C. C. 15110, Jones & Laughlin Steel Corporation v. Baltimore & Ohio Railroad, 96 I. C. C. 682. In that case the Commission found that rates on iron and steel articles from the Pittsburgh group to destination points included in the central and southern portion of Illinois were unreasonable to the extent that they exceeded rates, in cents per hundred pounds, set forth in the mileage table of rates incorporated in the Commission's decision, which distance rates were found to be just and reasonable maximum rates for the future. (Tr. 95.) Following the decision in that case the carriers held conferences among [fol. 495] themselves and jointly with shippers and receivers of iron and steel articles, and worked out an adjustment for Illinois territory which carriers and shippers believed in harmony with the Commission's decision. (Tr. 96.) Agent Galligan's Tariff I. C. C. No. 65 reflected that adjustment and was filed with the Commission to become effective April 25, 1926.

On April 24, 1926, the Commission suspended, by order in I. and S. Docket 2658, said tariff I. C. C. 65 and various tariffs and supplements issued by individual lines. On the same date the Commission advised Agent Galligan that the rates in his tariff were suspended because the interstate

carriers at the same time failed to re-align their rates on iron and steel articles within the Chicago switching district, and because certain of the interstate carriers failed to revise rates from Gary, Indiana, to points within the Chicago switching district to conform to the basis prescribed in the Jones & Laughlin case. The Commission requested that the suspension proceedings be held in abeyance to give carriers an opportunity to promptly re-align the rates in effect on iron and steel articles within the Chicago district and from Gary to the Chicago district to the basis in harmony with the rates proposed for similar distances from points outside the district other than Gary, Indiana; that the Commission felt undue prejudice against points outside the district such as Chicago Heights, shipping into the district, would result from the revision proposed from such outside points, by leaving a rate of two and one-half cents per hundred pounds between all points in the congested Chicago switching district, and rates of three and five cents respectively for single and joint-line hauls from Gary to points in the district. The communication from the Com-
[fol. 496] mission referred to is "Ex. No. 12, Witness Galligan." (Said exhibit offered and received in evidence.) (Tr. 97-98.)

Similar suspensions were made by the Public Service Commission of Indiana and the Illinois Commerce Commission.

Pursuant to the Commission's suggestion the interested Illinois carriers conferred regarding a revision of the rates in Galligan's Tariff I. C. C. No. 65 and suggested rates for applications within the Chicago switching district of 6 cents per hundred pounds, minimum 60,000 pounds; 8 cents per hundred pounds, minimum 36,000 pounds. It was further thought that rates of individual lines operating in the Chicago district would be revised to provide rates on articles of iron and steel listed in Agent Galligan's Tariff I. C. C. 65 to conform with changes to be made in Chicago switching committee tariffs. And after that conference a further one was held with Commissioner Campbell, members of the suspension board and Mr. Hardie and interested Illinois shippers. At the conference Illinois shippers urged that the Commission vacate its suspension order of April 24, 1926, I. and S. Docket 2658, allowing rates published for application in Illinois terrritory to become effective. (Tr.

98-99.) Thereafter the Commission vacated its order of April 24, 1926, which permitted the tariffs of individual lines and all portions of Agent Galligan's Tariff I. C. C. 65 to become effective except as to rates between Chicago Heights and Gary on the one hand, and the Chicago District on the other. The rates permitted to become effective were for application in Illinois territory and to become effective May 29, 1926. (Tr. 98-99.) The rates between Chicago Heights and Gary, on the one hand, and the Chicago district on the other, remained under suspension. (Tr. 100.)

[fol. 497] The Commission further suggested that carriers and shippers interested in the matter should take up for consideration the rates on iron and steel articles covered by said tariffs between Chicago Heights and points within the Chicago switching district, between points wholly within the Chicago switching district and between Gary, Indiana, and points within the Chicago switching district (Tr. 100), and undertake to harmonize them in fair relationship with rates from other points into the Chicago switching district, under the general principles announced in the decision of the Jones & Laughlin case. Numerous conferences were had relating to this matter.

On August 13, 1926, the Commission assigned for hearing on September 9, 1926, at the Great Northern Hotel, Chicago, I. and S. Dockets 2658 and 2713 (iron and steel articles from Brazil and Terre Haute, Indiana, to Chicago), also Docket No. 18402, W. J. Holiday Company v. Elgin, Joliet and Eastern Railroad, et al. (Tr. 101.)

The carriers and shippers, being unable to reach an agreement as to rates on iron and steel articles applying between Chicago Heights and the Chicago district, and within the Chicago switching district, and from Gary, Indiana, to the Chicago switching district, the carriers decided to file a tariff carrying rates on iron and steel articles listed in Agent Galligan's Tariff I. C. C. No. 65 for application in the Chicago switching district, 3 cents per hundred for a one-line haul, 5½ cents for two-line hauls, 6½ cents for three-line hauls, minimum 60,000 pounds. These rates were published and filed in Supplement No. 9 in Agent Galligan's Tariff I. C. C. No. 63, Illinois Commission No. 21, and Public Service Commission of Indiana No. R. C. 8. (Tr. 102.)

The Interstate Commerce Commission, as well as the [fol. 498] Illinois and Indiana Commissions, suspended the rates in Supplement No. 9 to I. C. C. No. 63, and matters involved therein were assigned for a hearing November 9th, 1926 at the Great Northern Hotel, Chicago, before Examiner Faul.

By order dated October 25, 1926, in I. and S. Dockets 2658 and 2780 the Commission required the carriers to furnish statistical data as to the shortest and longest and average haul on iron and steel articles in the Chicago district; also data as to the cost of moving iron and steel articles within the Chicago district covering the average one-line, two-line, and three- or more line hauls, also the general average haul. (Tr. 103.) The furnishing of this information caused the cancellation of the hearing set for November 9, 1926, and later the carriers were requested to make the statistical data required in the order of October 25, 1926, apply to all commodities instead of iron and steel alone as first called for (Tr. 104), which the carriers agreed to.

It was not believed that a cost study made during the winter months, due to adverse operating conditions, would fairly reflect a representative unit cost and would, therefore, not be indicative of normal conditions. On January 15, 1927, the Commission assigned for hearing in Chicago on February 16, 1927, the matters involved in I. and S. Dockets 2658, 2713 and 2780. Following the assignment of these cases conferences were arranged between representatives of carriers and shippers, as a result of which the interested parties reconciled their differences in regard to the rates, and they requested of the Commission a postponement of the hearing set for February 16, 1927. (Tr. 105.) But the Commission suggested that any compromise or proposed changes in rates should be presented [fol. 499] at the Chicago hearing February 16, 1927, as scheduled. (Tr. 106.)

On February 12, 1927, I filed application for permission to withdraw and cancel rates applicable on iron and steel articles within the Chicago district covered in Agent Galligan's Supplement No. 9 to I. C. C. No. 63, as well as rates published in individual lines, tariffs for single-line hauls in the district, and revised rates published for application on iron and steel articles between Chicago Heights and points within the Chicago district, and to publish in lieu

thereof the basis of rates agreed upon between carriers and shippers, to-wit: for single-line hauls, 3 cents; for two-line hauls, 3½ cents; for three or more line hauls, 4 cents per hundred pounds, minimum weight 60,000 pounds. (Tr. 106.) The Commission granted the authority to publish the suggested rates on short notice, effective April 30, 1927 (Tr. 107), but on April 29, 1927, the Commission, in I. and S. Docket 2900, suspended said rates until the 30th of November, 1927. They are now under suspension to August 30, 1928, and are the rates which are involved in this proceeding. (Tr. 107.)

May 25, 1927, in I. C. C. Docket 19610 and I. and S. Docket 2900, the Commission by order required carriers to submit, at a hearing to be held in Chicago in November, 1927, a statement or statements showing the cost of switching carload traffic within the Chicago switching district, and that in so doing the carriers might select yards of a limited number of carriers, which would be representative of the district as a whole (Tr. 107-108); that the statistical data submitted in response to notice of October 25, 1926, in connection with I. and S. Docket 2680 be resubmitted [fol. 500] and the data relating to the traffic test of September, 1926, be further analyzed to show the number of cars, load, average haul, revenue per car and per ton, not only for iron and steel but for such of the other 69 carload classes used in regular commodity statistics. (Tr. 108.) This order of the Commission has been complied with and exhibits have been prepared and filed with it in these proceedings and with the state commissions involved.

Cross-examination by Mr. Slater, of the Illinois Commerce Commission:

No arrangements were made for representatives of the State Commission to sit in at the conferences between shippers, carriers and the Interstate Commerce Commission. I do not recall that the Illinois Commerce Commission was represented when my application was filed to publish the rates agreed upon upon short notice with the Interstate Commerce Commission. My recollection is that the tariffs were also withdrawn from the files of the Illinois Commission and correspondingly revised rates filed with the Illinois Commission and the Indiana Commission. (Tr. 109-110.)

Cross-examination by Mr. Walter, representing shippers:

I could not say what percentage of the movement in the Chicago switching district is wholly intra-state. I do not think we have ever made any figures to show the movement in Illinois, and the interstate movement. I could not say that the intra-state movement is more than 75 per cent of the total. (Tr. 110.) From my experience I would say that the movement intra-state in the Chicago district is greater than the interstate movement. There is considerable movement intra-state in Indiana. I would not under- [fol. 501] take to state the movement in percentages without having the actual figures. There is considerable interstate movement from Indiana and also in the Illinois outside district—a very large movement. There has been no proposal on the part of the carriers to include within the Chicago district the Elgin, Joliet and Eastern Railway. (Tr. 111.) The carriers were satisfied with the original method of making rates under the Lowry agreement, but not as to the basis, because we are now trying to increase the original Lowry rate basis. (Tr. 112.) Leaving out of consideration the amount of the rate, the carriers generally are satisfied with the switching system in Chicago, the Lowry basis, so-called. (Tr. 112.) That switching arrangement has contributed materially to the development of the Chicago district and has been of very decided advantage to shippers and carriers. (Tr. 112.) There are some exceptions to the rates named in the Lowry tariff which vary from the rates under suspension; some rates published in the tariffs of individual lines for the movement of low-grade commodities, such as refuse, some raw materials, and refuse materials such as cinders, slag, etc. (Tr. 112.) I think the individual lines publishing those exceptions have proposed slight increases in the rates on those articles. There is no general exception on the part of carriers that I know of to remove those low-grade articles from their present rate adjustment, except such as may have been proposed by the individual lines, as I have heretofore stated. (Tr. 113.)

Chairman Campbell: It may be thoroughly understood that any negotiations that took place were merely for the sake of harmony, and they bind no one.

Mr. Walter: Mr. Davis, in offering the testimony that [fol. 502] you have offered, it was purely historical and not intended to prove that any agreement had been made that these rates ought to be allowed to go into effect or anything of that sort?

Mr. Davis: No, absolutely not. I simply wanted to cover the history of this rate litigation and do it historically, and Mr. Galligan probably knew it better than any of the rest of us. (Tr. 114.)

Mr. Slater: The Illinois Commission knew nothing about it and I did not want to be charged with the responsibility for the failure to advise them of these negotiations. I did not advise them because I knew nothing about them at all.

The Witness (continuing): I probably should have followed up my statement on direct where I ended, with the further statement that the cost study made by the carriers, and the exhibits filed in connection therewith, were considered by the carriers as justifying the rates that they published and filed and that are now under suspension. (Tr. 115.) I refer to the exhibits that have been offered, Mr. Saur's testimony explaining the exhibits and the result of the cost study. They are offered in support of the tariffs under suspension. (Tr. 116.) Wherever there is any proposal to change any existing switching rates or to change the territory to affect switching rates at all, it is embraced either in my testimony or in Mr. Saur's testimony or in the exhibits referred to. (Tr. 116.)

All shippers were not represented at the conferences to which I have referred. (Tr. 116.) When we got together with the shippers we undertook to compromise our differences in the district here, but no definite conclusion was reached at that time, so that the matter is still wide open as to the rates that are under suspension. There has not [fol. 503] been anything definite decided about them. (Tr. 117.) It was definitely understood that the carriers and shippers were absolutely free to take any course their judgment might indicate when the matter came up for consideration before the Commission. (Tr. 117.)

Question by Mr. Cardy:

Under the working out of the readjustment the same rates were published for application from Chicago Heights to points in the district as apply between points in the district. (Tr. 118.)

Question by Examiner Faul:

It was the understanding of the carriers that these proposed rates would be made applicable on all commodities movable within the Chicago switching district, including those that are now excepted from the Lowry basis, but not to extend to the excepted rates on so-called refuse materials or refuse commodities moving within the district by single-line hauls. (Tr. 119.) They are not involved in this proceeding, but are involved in the general investigation. (Tr. 120.)

Question by Chairman Campbell:

We are not urging that the proposed rates be applied on the low-grade commodities as we are urging them to be applied on the commodity basis in Chicago district. We expect to leave the rates on those low-grade commodities as they are. Those exceptions apply very largely on the [fol. 504] short lines here in the district. Those exceptions are on low-grade commodities such as dirt and cinders and low-grade commodities of that nature, and also on some raw materials. (Tr. 120.) In revising the Lowry tariffs where we advanced rates to the compromise basis, the rates in the individual line tariffs were brought up one-half cent or one cent where there were very low rates. Those increases were suspended at the same time. (Tr. 121.) It is my understanding that we are attempting to justify increases made in those low-grade commodity rates but not to put them up to the full basis. I mean proposed compromise basis.

The carriers do not propose any increase in their rates that are now excepted under the Lowry agreement unless they have filed them in the tariffs which have been suspended, with the exception of grain and coal, on which, I understand, they are proposing a new Lowry basis for those commodities. I will work up a statement that will show the rates on the low-grade commodities and all that are not being brought up to the full rate that will be carried in the Chicago switching committee agency tariffs. (Tr. 122.) I have stated that where rates were not under suspension it was not proposed to increase them. The statement I have agreed to furnish will show what rates are not to be increased. (Tr. 123.)

[fol. 504a] I do not mean to indicate that Chicago Heights agreed to any proposed grouping that would put them outside the Chicago switching district. (Tr. 129.)

Mr. Davis (representing respondent railroads): With the reservation of definitely answering you in regard to those other rates that we have been talking about, Mr. Chairman, we rest. (Tr. 130.)

[fol. 505] Mr. Walter: Mr. Chairman, I wired you after doing my best to get from the carriers one set each of Forms 103 and 107, and you asked me to bring it up, or suggest that I bring it up, here at the hearing. Form 107 gives the cost for each element of service and Form 103 gives the total cost for each index of the route. The objection on the part of the carriers is that this discloses information as to the business of one shipper as compared with another. The Interstate Commerce Commission has one set and the Illinois Commerce Commission has one set and we think that they should formally be offered in evidence and that we should be furnished with one copy. (Tr. 133.)

Mr. Davis: Well, of course, Mr. Walter has stated one of the objections that we have and we do not want to furnish it without being protected by your ruling or your order. The Illinois Commerce Commission served notice or an order upon us and we complied with that and gave it to them. Mr. Oliver has had use of the working sheets that covered this same information in our office but what I understand Mr. Oliver wants now and what Mr. Walter requests for him is a copy of a set so that he can have it with him constantly. If you order us to give Mr. Oliver a copy of what we furnished to the Illinois Commerce Commission and what we furnished to you, why I think we have an extra copy of it.

Mr. Walter: And make those that have been filed formally a part of the record so that they may be used for all purposes. (Tr. 134.)

Mr. Walter: I will make this statement of record, Mr. Chairman that the Association of Commerce and the Chicago Shippers Conference are composed of those who ship by large odds the greater majority of these cars, and many individual shippers also have entered their appearance and are here. (Tr. 135.)

Chairman Campbell: We will make such order, that it be introduced in evidence unless there is objection by the

shippers which is convincing to us that certain items should be withheld. (Tr. 136.)

[fol. 506] Chairman Campbell: On account of the nature of the information, we will not require the distribution of it generally. We will require sufficient copies for our Commission and the state commissions, with copies made available for those who can show their interest so that the same can be examined and used by them, but we will not require the general distribution of these exhibits. (Tr. 137-138.)

Chairman Campbell: The order will protect you. We will make every endeavor to protect you and every endeavor to protect the shippers so that this information will not be generally used. (The two documents referred to were received in evidence and marked Exhibits 90 and 91. See Transcript page 1509.)

[fol. 507] Chairman Campbell: We rest.

The hearing was adjourned, to reconvene at Chicago, Illinois, May 16, 1928 at 9:30 A. M. (Tr. 139.)

On May 16, 1928, the hearing in said proceeding was reconvened pursuant to said adjournment. (Tr. 141.)

George W. Oliver, called in behalf of the shipping interests, was sworn and testified as follows:

Direct examination by Mr. Walter, representing shippers:

I am a railroad statistician and live in Chicago, Illinois. (Tr. 141.) In the past few weeks I have engaged in a study of the switching situation as it pertains to costs here. On March 8th I received my copy of the cost exhibits filed by the carriers in this proceeding. At a meeting at Mr. Galligan's office on March 7th arrangements were made whereby I received access to the working papers of the railroads. Since March 8th I have worked continuously in a review of the railroads' work. (Tr. 142.) Due to shortness of time since getting the railroad exhibits I have had to curtail to a considerable extent my investigations in order to be pre-
[fol. 508] pared for this hearing. (Tr. 142-143.) I have not made a full analysis of the routes over which the switching district traffic moves, or an examination of the results of the cost of the various elements of service on the railroads.

(Tr. 143.) I have been able to make but a short analysis of switching costs per engine hour, and only a limited amount of time to the important question of the assignment of car repairs to switching district traffic. Mr. Saur stated the methods the railroads followed, in a general way, in which the railroad exhibits were prepared. I will state those methods and show how the cost calculations of the railroads have been thrown together arriving at the final results obtained in their Ex. No. 7.

In preparing their final cost exhibit they followed four main processes:

First: They determined the total time cars moving in September, 1926, were in switching district service. Car detention was based upon the elapsed time from the time cars are supposedly assigned to shippers for loading, to the time cars are released for unloading. Such amount of car detention in days was multiplied by an average car repair cost per day to arrive at car repairs assignable to switching district traffic. (Tr. 144.) Points between which cars were assigned and then released formed the route to which the operating representatives of each road assigned the elements of service for the purpose of calculating through switching cost per car.

Second: They made tests for the purpose of determining the cost of each separate movement made by a car, which is termed "an element of service." For example, a classification in a particular yard, or transfer from one yard to [fol. 509] another, or "spotting" a car in industry (Tr. 144), each constitute an element of service.

Third: An operating representative for each railroad then on a blank recorded the kinds of movements or elements of service that the car received in being transported between each two industries, or between each industry and an interchange point with a connecting line, inclusive of the empty haul. The cost for each element of service was then inserted and the various items totaled, arriving at the total switching cost for the through movements of the car. This cost per car was then applied to the number of cars moving over the particular route in September, 1926.

Fourth: The railroads made a test for the purpose of ascertaining the cost for clerical service per car.

The results of these four processes were assembled by the railroads and final results are contained in Ex. No. 7, consisting of three pages.

The results of processes 2 and 4, switching costs per element of service and clerical costs per car, are susceptible of check from the working papers. Process 1, the car detention, can only be checked at a tremendous expense of time, and I have only endeavored to review this work in a very limited way with the assistance of individual shippers, which I shall refer to latter. (Tr. 145.)

Process 3, the assignment of elements of service to each route, being based upon the knowledge and experience of operating representatives of the railroads, is not susceptible of check except by actually following cars which move over the various routes, ascertaining exactly what happened to these cars.

[fol. 510] A little of this work was attempted by one of the shippers, and the results of his investigations will be placed in evidence later. This process is about the most important phase of these cost studies. The exhibit I will introduce will show illustrations of various routes which will be discussed later, and which illustrate clearly the manner in which the switching costs have been assembled.

Mr. Walter: We now offer in evidence Ex. No. 13.

Mr. Davis: We object to the introduction of Ex. No. 13, particularly with reference to page 46, giving the proposed tentative valuation by the Commission. We do not think that has any proper place in this case in regard to the fixing of freight rates, as the final value has not yet been fixed. This objection is made on behalf of all the interested carriers. (Tr. 146.)

Examiner Faul: The exhibit will be received subject to your objection.

(The document marked "Ex. No. 13, Witness Oliver," was thereupon received in evidence. (Tr. 147.))

The Witness (continuing): This exhibit was prepared by me or under my direction, and I believe it to be correct. (Tr. 147.)

The processes which I refer to were applied under the provisions of the Saur-Coverston formula. I believe this formula should be modified in three respects:

First: It should provide for ascertainment of separate engine-hour costs for industry service, for weighing at industries, and for other service. (Tr. 148.) This should be done because smaller engines are usually used in industry service and the industry usually owns and maintains [fol. 511] the tracks upon which the engines operate.

Second: The cost per engine hour for maintenance of way and structures should be based upon expenses for a year, divided by the engine hours for a year, instead of taking one week's part of a year's maintenance and dividing that part by the engine hours for the week.

Third: The formula provides for the ascertainment of freight car repairs and depreciation by multiplying the number of car days assignable to the particular traffic, by the repairs and depreciation per car day for the entire line of one or more railroads. This basis is not correct, since car repairs relate not only to time but also to mileage the cars make, and certain other factors which affect repairs. The formula basis is no more proper for switching district traffic than it is for long-haul traffic.

It has a tendency to over-state car repairs for short hauls and to under-state them for long hauls. This is a problem which has been given constant study by numerous persons for a great many years, and as far as I know, an accurate basis has never been developed. (Tr. 149.)

I believe the formula should contain a provision for the ascertainment of car repairs on an alternative basis which reflects the effect of both time and mileage. I shall refer to this subject again. If modification of the formula is made to meet these criticisms I believe it will give representative and reliable results, provided it is properly and correctly applied.

My investigation convinces me that it has not been properly applied by the carriers in the investigations they have made, for the following reasons:

[fol. 512] First: Examination of the switching cost for each element of service shows wide variations, due in part to the fact that a test period of only one week was used.

Many abnormally high costs would be greatly altered if a longer period were used. (Tr. 150.)

I therefore believe that tests of this character should be made for a period of one month. This would increase the number of basic reports to be made by conductors and increase the volume of work summarizing the reports, but from that point on the volume of work involved in assembling the results under the four processes would be substantially the same for a test of one month as for a test of one week.

Second: Results of a week's test period at various times in 1927 have been applied to cars which moved in the month of September, 1926. This has resulted in distorted costs, which I shall later demonstrate. I believe that the results of a test made under the Saur-Coverston formula should be applied to cars that actually moved in the test period, rather than those which moved in some other period.

Third: I do not believe the plan adopted by the railroads in determining when cars are assigned to and released from switching district traffic is correct for the purpose of ascertaining car repairs or for the purpose of ascertaining the routes and the proportion of the movement wholly assignable to switching district traffic.

This in many cases obviously results in an over-assignment of costs and in others an under-assignment. In many instances the real responsibility for empty movements is ignored. (Tr. 151.)

[fol. 518] Payment for the use of private cars is made by the railroads in only a few instances, such as tank cars, and only then upon the basis of 1.5 cents per mile for the distance between base yards.

They pay for all repairs for which the user is responsible, but so far as I can ascertain the amount of these repairs is very small. (Tr. 151.)

On page 2 of Ex. No. 7, showing costs of two-line hauls, opposite the commodity "Refined Petroleum," $3855.00 is included for car detention costs, and for "Asphaltum," $308.24 as car detention costs. These two commodities move in tank cars. There are also other commodities which move in tank cars, such as vinegar, included in certain general commodity groups. (Tr. 151-152.) These par-

ticular charges for car detention are greatly over-stated. Excluding the car detention charge for refined petroleum from the total cost for two-line hauls, when spread over all the two-line cars moved, would cause a reduction of about 34 cents per car in average cost per car shown for two-line hauls. This is mentioned as an illustration showing the effect of this treatment of tank car repairs. (Tr. 152.) The meager information contained in the exhibits thus far introduced by the railroads is valueless for testing the reasonableness of their results or for the purpose of checking any of the processes. It is necessary to refer to the working papers back of these final costs.

To amplify the record a little in this direction I have prepared three statements, pages 1, 2 and 3 of my exhibit No. 13, showing an analysis of clerical and switching costs of railroads for one-, two- and three-line hauls. (Tr. 152.)

On page 1 of the exhibit is shown the great variance [fol. 514] in clerical costs for the different roads, ranging from 27 cents per car for the Chicago, Burlington & Quincy Railroad up to $1.24 for the Chicago, Rock Island & Pacific Railway. (Tr. 152.) I have not had time to investigate the causes of those variances. At the bottom of page 1 I have shown the percentage of switching costs contributed by the trunk line roads and by the switching roads to the total cost for all cars embraced in the study. (Tr. 153.) The switching roads contributed 80.6 per cent of the total.

Page 2 is a summary for two-line cars. Substantial variances are here shown in the clerical costs, ranging from 27 cents on the Chicago, Burlington & Quincy to 86 cents on the Baltimore & Ohio Chicago Terminal and 24 cents on the Indiana Harbor Belt. (Tr. 153.)

These clerical costs cover the originating or terminating end of the service, and should be doubled to get the through clerical cost per car.

At the bottom of the column I show average cost per car for clerical costs, the average per car originated, 87 cents, is for the through movement. At the bottom of the sheet it is shown that 59 per cent of the total switching cost is contributed by the switching roads to these two-line hauls. The average cost per car shown under switching costs for the various roads is each road's cost for its part of the haul, the total through cost for all cars being

$13.23 for switching service only. I did not put on that sheet the total of clerical and switching cost because it does not include car repairs. The way the carriers threw their car detention costs together, they really could not be segregated by roads in order to have them compare properly with these figures. (Tr. 154.) The car detention figures [fol. 515] were assembled by the originating railroads. These figures comprise the clerical cost and the switching cost for each railroad on the business which it originated and on that which it terminates. This figure of $13.33 for average switching cost is the weighted average cost.

Page 3 shows similar information for three-line hauls. The Belt Railway shows no clerical cost for its business, which was all intermediate. It did not participate as an originating or terminating carrier in any three-line hauls. The railroads, in arriving at their average clerical cost, did not count the intermediate consignments. It is not proper to include a charge for intermediate clerical service. It is all embodied in their other cost on one- and two-line hauls. Some roads handled the matter of their clerical cost in a different way. Some counted the handlings on intermediate cars. On three-line hauls 51 per cent of the switching costs are contributed by switching roads.

Page 4 of my exhibit is a comparative statement of engine-hour costs of railroads, as taken from Ex. 2 in this case. The engine-hour costs so shown differ widely on the different railroads.

Costs for track maintenance range from 37 cents per engine hour on the Chicago, Burlington & Quincy, to $6.85 on the Chicago & Illinois Western, and up to $11.00 for the Gibson Hump on the Indiana Harbor Belt. (Tr. 155.)

The exhibit discloses wide variations in other items. Referring to Account 382—Fuel for Yard Locomotives—it will be noted that the costs for trunk lines are uniformly lower than the cost for the switching and industrial roads. [fol. 516] The switching and industrial roads include in their fuel cost the freight rate from the mines to the Chicago switching district. Trunk lines generally haul the coal to Chicago as company material, claiming nothing for this company material service in their engine-hour costs. Their fuel costs are therefore somewhat lower than they would otherwise be. (Tr. 156.) Nothing is included for the transportation of other kinds of company material to

the Chicago district. The amount of company service on the switching and industrial roads is negligible, and probably, as nearly as I can estimate, less than 1 per cent of the total expense.

Due to lack of time I have been unable to check the accuracy of the engine-hour costs, but as far as my investigations have gone, I am convinced that they are conservatively low and might properly be increased to allow for the cost of transporting company material. I have not had time to determine how much we might be allowed in this direction. (Tr. 156.)

Mr. Saur enumerated certain respects of under-statements of switching costs in his exhibit. He said that operating results indicated that 14 per cent less cars were handled per engine hour and that 13 per cent more fuel was used per month during December, January and February than during the other nine months of the years 1925, 1926 and 1927. (Tr. 157.) The main factor which results in higher costs in the winter-time operation is because the output per engine hour is reduced. Mr. Sauer shows there is 14 per cent less output. That means the cost per car handled would be 16 per cent higher during the winter months than it would be during the other nine months of the year. Taking the three months of December, January [fol. 517] and February at 116 per cent, and the other nine months at 100 per cent, the base he uses, when equated indicates that if the winter months had been taken into account in the test which the roads made, it would increase the test period costs which they arrived at, which were all made in June, August and October, by 4 per cent on the average. (Tr. 157-158.)

As to greater fuel consumption in winter months, using the same basis, three months at 113 per cent of the nine months as a base, the nine months being at 100 per cent, when equated shows that if the higher fuel consumption in the winter months is taken into account it would increase fuel consumption per engine hour 3 1/3 per cent.

Less than 15 per cent of the engine-hour costs are for fuel, so that the aggregate under-charge would be 3 1/3 per cent of 15, or ½ of 1 per cent, which would reflect the amount of the increase which should be made in engine-hour costs and leave the greater fuel consumption in the three winter months.

No other important accounts would cause a higher engine-hour cost in the winter months than in the summer, spring and fall months. Wage rates are the same in the winter as they are in the summer. (Tr. 158.) The only factor that would come in would be the possibility of more overtime in the winter months than in the summer months. I do not know whether such a situation exists on the switching roads or not. The fuel item is so small that I hardly think it worth considering.

There are so many variances in the results in this case that minor items of that sort virtually have to go to the discard. The higher cost in the winter months, due to the lower output per engine-hour, is a matter of importance. [fol. 518] I find that to be 4 per cent, and the carriers' costs really ought to be augmented by that percentage. That would increase the single-line haul costs 46 cents per car; two-line hauls 53 cents per car; three-line hauls 60 cents per car. (Tr. 159.) An unusual flow of cars during the winter months might bring that average down to what it is for the summer months, if there were any crews which were not working capacity, but on the average I would doubt whether that would really result. (Tr. 159.) I know of no way of measuring the importance of several other under-charges mentioned by Mr. Saur. Perhaps a method could be used to determine the amount of undercharge due to transportation of company materials in the district. It would require quite a bit of study. I have not had time to devote a minute to that. (Tr. 160.)

Pages 5 to 37 inclusive of my exhibit show the manner in which costs were assigned by the operating representatives to the individual routes. Many thousands of those routes were compiled by railroad representatives. I had time to review only a small portion of these routes, and hence adopted the plan of keeping data for each route for the movements of important volume, and for a few small-volume routes because of the representativeness of origin and destination territory involved. Copies were made of more than 400 routings, including illustrations of one-, two- and three-line hauls. Sample car numbers up to a maximum of six, showing cars in which traffic moved, were also drawn off. (Tr. 160.) These sheets were given interested shippers to check all the information shown on the sheets, as far as possible. (Tr. 161.) Where route

sheets indicated the switching of cars into plant for routing, they were pulled out empty at destination, shippers [fol. 519] were asked to check their records as to the fact, or if such cars were reloaded. Since only a week's period was used on the matter of switching costs for each industry, shippers were also asked as to their views as to the representativeness of the particular week as applied to their situation. They were also asked to advise as to the correctness of any charges contained in the routings with which they were familiar.

Out of these 400 or more route sheets exceptions of one kind of another have been taken on a large number. Some of those questioned have been copied and reproduced in this exhibit, pages 5 to 37, along with sketches showing the routes assigned to the cars by the operating representatives. These particular routes are representative of others which were copied but not reproduced, and they are representative of many others not copied at all. A few of the routes shown in the exhibit are not questioned, but are reproduced merely to show the methods of switching traffic in the district and the circuitous hauls involved. (Tr. 161.)

On pages 38 to 41 I show the results of an analysis of the switching costs for all routes included in carriers' cost studies. Page 38 is the analysis for single-line cars. The railroads included 6,854 single-line cars on the Elgin, Joliet & Eastern which did not move within the district and should not be included in any showing purporting to represent costs of Chicago switching district traffic. This page shows distribution of costs by elements of service, with number of services assigned under each element. The right-hand column shows the percentage of total switching cars. Combining the five top items shows the cost for origin and destination service, including weighing, to be 47.6 per cent of the total cost. Eliminating team-track [fol. 520] items, 43 per cent of the total cost is for service at the industry, which embraces industry switching, switching allowances, joint switching and weighing. Some weighing is done in railroad yards, but substantially all of it is performed upon property owned and maintained by the industries. (Tr. 162.)

Twenty-two per cent of the total switching cost in classification service and about 29 per cent of the total cost is in transfer service. The latter charges include cost of

delay to transfer cars blocked at grade crossings of other railroads.

This in some instances is quite an important item. The Indiana Harbor Belt, from Lake Front Yard to the Michigan Avenue Yard, a distance of 1.7 miles, requires simultaneous clearing over five trunk line railroads, the trip taking anywhere from 15 minutes to 3 hours. The average for 17 runs in the test period was 50 minutes for the 1.7 miles. These illustrations could be multiplied, showing that switching runs are subordinated to every other class of traffic; that transfer costs are somewhat higher than if each class of traffic bore its proportion of the cost of delays incident to the operation of the intricate network of railroads in the Chicago switching district. (Tr. 163.) This page shows that 73 per cent of the total cost is for interchange of empty cars to connecting lines. Nearly all of these charges are for return of foreign-line cars, which in many instances, presumably, arrive at the reporting railroad in road-haul service, the return of the empty to the connecting line being therefore chargeable to the prior road-haul movement. (Tr. 163-164.) Along with the elimination of this interchange should go the classification and transfer cost in connection with the interchange service. [fol. 521] (Tr. 163.) It is not possible to estimate the extent of this over-charge without going into considerable work. (Tr. 164.)

Page 5 shows cost of switching service on stone from Consumers Company at McCook to the Federal Furnace Company. At the left side of the sheet are elements of service assigned to this movement by representatives of the Indiana Harbor Belt, based on their knowledge as to handling these cars, and based upon the carriers' analysis that these cars were assigned for loading at Norpaul and released from this service after delivery to the New York Central at Gibson Yard. The railroads made no investigation as to how these cars happened to be at Norpaul. (Tr. 164.) It appears to me that they arrived there in road-haul service. They may have been received empty from the St. Paul or the North Western. (Tr. 164.)

In instances like these it would not be proper to charge empty service to this movement. (Tr. 165.) The Indiana Harbor Belt receives $2.70 on empty cars on which it performs road haul, when turned back to it for delivery to an

originating road haul railroad. (Tr. 165.) The I. H. B. receives this revenue when a car is diverted by it to some destination outside the Chicago district. The Belt Railway also receives payment for empty cars handled under such conditions, its rate being $3.15. In 1926 the Indiana Harbor Belt received this rate on 332,353 cars. The Belt received its charge on 512,123 empty cars. (Tr. 165.) The B. & O. C. T. receives pay for empty movement under the foregoing conditions, but in 1926 it had handled only 9,524 empty cars, but I do not know the amount per car that company received. (Tr. 165.) The railroads should have investigated the conditions under which the cars in question reached the Norpaul yard.

[fol. 522] The last item on the sheet shows the charge for classification service at the South Gibson yard hump of $1.55 per car. (Tr. 155-156.) The Indiana Harbor Belt working papers show that charge should be approximately $1.15 per car. The error results from using engine-hour cost of $33.33 which should have been put in at $18.96 per engine hour. (Tr. 166.) The $1.55 per car was applied to 2,788 cars. The same error was made in calculating classification cost at the Gibson North hump. The cost should be 63 cents per engine hour, as compared with 84 cents as shown by the Indiana Harbor Belt. This element of service was applied to 1247 cars. Substituting my figures for the ones used would reduce the cost per car, weighed over all of the cars for all railroads, 12 cents on one-line cars and 4 cents on two-line cars. (Tr. 166.) This indicates the character of small errors disclosed by my check. There are a lot of those, not amounting to much individually, but when all are considered they run into a considerable figure. (Tr. 167.)

Page No. 6 shows the same character of error in railroads' service and costs switching fire brick from the Harbison-Walker Company, East Chicago, to the Inland Steel Company plant No. 2 at Indiana Harbor, with relation to Chicago and North Western cars. The empty haul to the Gibson yard was charged against the switching district movement. (Tr. 167.)

Page 7 shows switching service and cost on stone from A. C. O'Laughlin Company to Central Lime & Cement Company via Indiana Harbor Belt in New York Central cars. These cars were supplied to the O'Laughlin Company from

Norpaul for loading; thence returned to Norpaul, there classified and transported to Chappell, there classified and thence to Elston. After unloading at the industry they were returned to Blue Island, there classified and then [fol. 523] passed over the south hump to the New York Central. All cars passing over the south hump are in possession of the New York Central. The railroads made no investigation to ascertain the facts in connection with these movements. (Tr. 167-168.)

Page 8 shows service and costs on brick from Illinois Brick Company Yard 35 to Illinois Brick Company team track at Kedzie Avenue by Indiana Harbor Belt in Chicago & North Western cars. The switching district movement in this illustration is charged with the full return empty movement after returning to Argo and there classified. These appear to be cars returning home to the Chicago & North Western Railway after having been in road-haul service. Part of this empty cost should have been charged to the prior road-haul movement. (Tr. 168.)

All that can be charged against the switching district traffic is the empty movement for which it is responsible, which in this instance is the empty movement supplying the cars for loading at the Illinois Brick Company at Dolton, and then after unloading at the team track the empty movement from Elston out to Argo. The cost should end at that base yard. The benefit to the road-haul traffic is this: If these cars came on to the Indiana Harbor Belt in road-haul traffic, the switching district traffic has gotten the cars as far as Argo, and the empty cost beyond should not be charged against the switching district traffic. (Tr. 169.) The railroads have made no investigation as to the costs of these empty movements. The empty movements, on a large part of these cars, should end at the base yard. Our investigations show previous loading in road-haul movement. (Tr. 170.)

Page No. 9 of the exhibit shows the switching service and cost on brick from the Tuthill Building Material Com- [fol. 524] pany to the Sixty-third Street team track via the B. & O. C. T., loaded in Baltimore & Ohio cars. In this case, after unloading at the Sixty-third Street team track, the empty car was taken to Barr yard, from which it was originally supplied for loading at the Tuthill Building Material yard, and after classification at the Barr yard it was

then delivered to the B. & O. C. T. The costs incident to the latter movement are improperly charged to the switching district traffic on the basis of the facts as shown by the carriers' working papers. (Tr. 170.) The empty movement ending at Barr yard, that charged as switching district traffic, is 100 per cent empty haul. No greater charge than that could be made. There may be facts that would explain that. The railroads have made no research relating to them. I cannot see what facts would explain the situation. (Tr. 171.)

The Blue Island yard of the Indiana Harbor Belt on page 5 of my exhibit should be shown just to the right of the curve, instead of the left. Carriers' Ex. No. 6 shows this in greater detail (Tr. 171), and on page 10 the Blue Island yard of the Indiana Harbor Belt should be directly below the Barr yard of the B. & O. C. T. The two yards are about a quarter of a mile apart. (Tr. 172.)

Page 39 for two-line hauls and page 40 for three-line hauls show similar information to that contained on page 38 for one-line hauls. (Tr. 172.) Traffic to and from Gary, Indiana, by the Elgin, Joliet & Eastern are shown in the railroads' exhibits covering two- and three-line hauls, as switching district business. The movement is not entirely within the district and should not have been included in an exhibit purporting to show costs for the Chicago switch-
[fol. 525] ing district. It is not possible to exclude this improper inclusion of Gary, Indiana, traffic without going to considerable work, because the E. J. & E., in computing switching costs, included the cost from each industry to the junction point with each line to which delivered. For example, it included all costs from the Illinois Steel Company at Gary, to the Pennsylvania Railroad at Clark, irrespective of where deliveries so made to the Pennsylvania at Clark were going. From there you could not identify the consignee. The Pennsylvania, in compiling its end of the exhibit, showed all business received from the E. J. & E. going to a particular consignee, irrespective of what consignor it came from on the E. J. & E.; so it is not possible to determine, in case of Pennsylvania Railroad costs, how much of the business they received from the E. J. & E. from Gary or from other points on the E. J. & E. (Tr. 173.) It is possible to estimate the effect of its inclusion upon the two-line hauls. The E. J. & E. working papers show aver-

age switching cost per car to this company from Gary up to its connection with the destination road as $8.22. This is augmented to allow for omitted formula accounts in the manner described by Mr. Saur. (Tr. 173.) The average switching costs on two-line hauls for the Indiana Harbor Belt, the Pennsylvania, the B. & O. C. T. and the Belt Railway, which handle the bulk of E. J. & E. business, is $7.92 per car on cars received from the E. J. & E. (Tr. 173-174.) This figure added to the $8.22 mentioned, gives $16.14 as switching costs per car for two-line haul, Gary, Indiana, to Chicago switching district. This is $2.91 greater than the average shown for all two-line hauls in the carriers' exhibits. (Tr. 174.)

Carriers' working papers show 815 cars moving from [fol. 526] Gary, Indiana, to the Chicago switching district in two-line hauls. At $16.14 per car the total cost would be $13,170.00. If these cars' switching costs are excluded from the cost of two-line hauls shown in carriers' cost exhibit, it would make the average cost $13.00 per car, or 23 cents per car less than shown in the railroads' exhibit. (Tr. 174.)

These cost studies are the result of a tremendous mass of small transactions, and no single discrepancy will produce much of a difference, but the many discrepancies in the aggregate will amount to a considerable sum and become quite important. It is not possible to make similar calculations for three-line hauls, as the methods used by the carriers do not permit singling out of the cost for through movements except by combining purported individual items. (Tr. 174.)

Page 41 of my exhibit shows that 40 per cent of total switching cost is for industry switching, switching allowances, joint switching and weighing, substantially all of which services are performed upon property owned and maintained by the industries. (Tr. 175.)

Page 42 of the exhibit shows the cost per car for each element of service for the test period, compared with cost per car resulting from the application of test period results of switching district traffic moved in September, 1926. The four columns at the left are comparisons of the industry switching costs which show the district traffic average is consistently in excess of the test period average, and such consistent excess should not be expected. (Tr. 175.)

The district traffic weighted average industry cost for all roads is $2.77, and 38 cents in excess of the test period average, and 88 cents on team track switching in excess of the test period average. (Tr. 175.) Classification and [fol. 527] transfer service show the same, and interchange cost for district traffic is 9 cents in excess of the test period average. (Tr. 176.)

These results come from the application of certain abnormal test period costs to cars moving in another period when the traffic volume was heavier. To illustrate, the Pennsylvania, compiling its costs, applied industry switching, $15.82, to 85 cars of switching district traffic moved in September, 1926, from the Albert Schwill plant. The industry cost was based upon 300 switching minutes for 4 loaded cars in the week ended October 25, 1927, which was subnormal at that time, and the switching time included switches when only empties were handled. Costs of this type, if applied to switching district cars shipped by this industry in the test period, would have influenced the general average cost but little, since the plant's business was so small at the time. (Tr. 176.)

On the Indiana Harbor Belt element No. 346, team track switching at Osborne, $4.99 per car, was applied to 133 cars moving in September, 1926, that was based upon 110 minutes' switching time, handling 7 loaded cars at this team track during the week's test period in August, 1927. (Tr. 177.) The cost per car for the business moving in September, 1926, would have been very much less.

On the same route element No. 328, team track switching at Chicago Ridge, $4.21 cost per car, was applied to 62 cars of switching district traffic in September, 1926. This cost was based upon 40 minutes' time to 3 loaded cars in the August, 1927, test period. This was not representative of the business moved in September, 1926. (Tr. 177.)

On B. & O. C. T., element No. 598, industrial switching [fol. 528] at Tuthill Building Material Company, $4.66 per car was applied to 43 cars moving in September, 1926, which cost was based upon 9 loaded cars moving during the August, 1927, test period.

There are numerous illustrations of this type. (Tr. 177.) The suggestion that these abnormally high costs resulting from the small volume of business, when applied to a large volume moving in another period, are offset by

low costs resulting from higher volume in the test period applied to a small volume in the other period, is not correct, in my judgment, because a variable volume of traffic, when applied to traffic moving in another period will generally produce a higher average cost than the correct one. (Tr. 177-178.) An over-charge has resulted from the application of these widely-varying test period costs to cars which moved in another period, and demonstrates the desirability of a longer test period and the application of test period costs to cars moving in that period. (Tr. 178.)

Page 10 of the exhibit shows switching service and cost on iron and steel from Inland Steel Company plant No. 1 to the Concrete Engineering Company via Indiana Harbor Belt and the B. & O. C. T. in New York Central cars. (Tr. 179.) The operating representative assigned to cars for this movement in the cost study at Norpaul, where the cars were classified, transported thence to Blue Island, classified there; thence to Michigan Avenue yard and there classified; and then delivered to the Inland Steel Company, which loaded them for the Concrete Engineering Company, routed Indiana Harbor Belt and Baltimore & Ohio Chicago Terminal. After unloading at Concrete Engineering Company costs were assigned for hauling the empties to Barr yard, there classified, thence to Whiting, classified there, and then delivered to the New York Central at 119th Street. [fol. 529] Calculating roughly the mileage in this movement, there are about 38 miles empty haul before loading, 35 miles of loaded haul, 35 miles empty haul after unloading, totaling 73 miles empty haul compared with 35 miles loaded haul. (Tr. 179.) Checking the record of the four car numbers respecting this movement, 2 of the cars were shipped by the Inland Steel previous to the assignment for loading to the Concrete Engineering Company, one under date of August 16th to Milwaukee for the Chicago, Milwaukee, St. Paul & Pacific, and the latter car shipped August 19th to Milwaukee via the latter road. (Tr. 180.) These New York Central cars arrived at Norpaul after being in road-haul service. The empty service in connection with this movement has been treated improperly. (Tr. 180.)

Page No. 11 shows switching service and cost on stone from Superior Stone Company to R. Chisholm Material Company via Indiana Harbor Belt and Baltimore & Ohio

Chicago Terminal in New York Central System cars. The representative of the Indiana Harbor Belt shows that the New York Central supplied these cars from Norpaul for loading at the Superior Stone Company. The loads were then classified at McCook and hauled to Blue Island, there classified, hauled to Michigan Avenue yard, classified there, and then delivered to the Baltimore & Ohio Chicago Terminal at its East Chicago yard. In this movement those cars have moved from west of the city over to the lake front, in the neighborhood of Indiana Harbor. (Tr. 180.) The Baltimore & Ohio Chicago Terminal, after delivery there, moved them to the 49th Avenue yard, classified them there, and then delivered them to the R. Chisholm Material Company. (Tr. 181.) The empties were then delivered to the New York Central at 119th Street under the assignment made by the representative of the Baltimore & Ohio Chicago Terminal.

[fol. 530] The loaded movement of these cars was 63 miles, the empty movement 45 miles, or a total of 108 miles approximately. The Superior Stone Company and the consignee of this traffic are approximately 12 miles apart by the Short Line. (Tr. 181.) East Chicago is the only point of interchange between the Indiana Harbor Belt and the Baltimore & Ohio Chicago Terminal. The Indiana Harbor Belt's Blue Island yard is only about a quarter of a mile from the Barr yard, with a brick plant between the two. Both roads enter the brick plant. (Tr. 181.) It is a continuous connection between the two roads and some years ago was used for interchange of some business. I do not know why it is not used now. There are also other routes that could have handled this traffic. (Tr. 182.) I understand that the Indiana Harbor Belt now has rights over the Belt Railway to the Fortieth Avenue yard of the Chicago & North Western. It would seem there are possibilities for practical low-cost routes for business interchange between these two particular roads which would eliminate the tremendous out-of-line haul of this particular traffic. (Tr. 182.) I do not say that 12 miles is a workable route. (Tr. 183.) I do not know, but it is the Short Line. We will give you the particular route later.

There are several shorter routes available on the movement from the Superior Stone Company to the Chisholm

plant. The shortest distance, whether workable or not I do not know, is based on the distance from McCook to the junction of the Indiana Harbor Belt with the Chicago Great Western at Bellwood, and from that point to Homan Avenue yard of the Baltimore & Ohio Chicago Terminal. As I figure it, it is about 12 miles. (Tr. 184.) This would make a one-line haul if the Baltimore & Ohio Chicago Terminal has, or could get, trackage rights from the Chicago Great [fol. 531] Western; as the latter uses the Baltimore & Ohio Chicago Terminal into the Grand Central depot, I think it would be easy for it to secure such trackage rights. (Tr. 185.) It would be a two-line haul if the Indiana Harbor Belt originates the traffic, but if the Baltimore & Ohio Chicago Terminal should originate it it would be a one-line haul. The Baltimore & Ohio Chicago Terminal already has trackage rights over the Indiana Harbor Belt all the way to Franklin Park. (Tr. 185.)

Page 12 shows switching service and cost on stone from the Federal Stone Company to the R. Chisholm Material Company via Baltimore & Ohio Chicago Terminal in Baltimore & Ohio Railroad cars. (Tr. 185.) This is a movement similar to the one shown on page 11, except as to a different shipper, and this traffic moved into Barr yard and from there to 48th Avenue and was then delivered to the consignee. (Tr. 186.) The switching cost at the Federal Stone Company was shown as $5.35 per car. It is based upon the 7 loads handled in the week test period ended August 10, 1927. The Indiana Harbor Belt has access to the Federal Stone Company. (Tr. 186.)

Page 13 of the exhibit shows switching service and cost on gasoline from the Standard Oil Company to Swan & Finch via the Baltimore & Ohio Chicago Terminal and Belt Railway. This traffic moved to Homan Avenue, thence to 48th Avenue, there classified, and then delivered to the Belt Railway at 22d Street; and by it hauled to Clearing, there classified, and then delivered to the consignee. The Baltimore & Ohio Chicago Terminal crosses the Chicago Belt directly to the right of Clearing, but shows as Clearing on the map, Ex. No. 6. (Tr. 186.) From Clearing yard, following the Belt Railway directly east, the first red line north and south is the Baltimore & Ohio Chicago [fol. 532] Terminal. (Tr. 187.) There is a track connection between them at this point, but not used as an interchange

point. Whether or not a practical interchange point I do not know, though I believe that the Baltimore & Ohio Chicago Terminal has a sufficient volume of traffic to make deliveries direct to the Belt Railway at the Clearing yard, the same as other tenant companies do. If that was done the haul to Homan Avenue, the classification at 48th Avenue, and the service of the Belt from 22d Street yard to Clearing would be eliminated. (Tr. 187.)

Page 14 shows switching service and cost on stone from the Consumers Company at McCook to McClintic-Marshall Company via Baltimore & Ohio Chicago Terminal and Belt Railway, in Baltimore & Ohio Railroad cars. This is similar to the movement shown on pages 12 and 13 of the exhibit. (Tr. 187.) Traffic originating in the McCook district on the Indiana Harbor would be delivered to the Belt Railway a short distance west of Clearing, but the Baltimore & Ohio Chicago Terminal hauls the traffic to the Barr yard, thence to 48th Avenue, then delivering it to the Belt at 22d Street, and by the latter it is hauled to Clearing. (Tr. 188.) There are possibilities of working out a much cheaper movement for this traffic.

Page 15 of the exhibit shows switching service and cost on stone from the Brownell Improvement Company to Farr Brothers, via the Baltimore & Ohio Chicago Terminal and Belt Railway, in Big Four cars, a situation similar to that shown on page 14, except this traffic is originated in the vicinity of Barr yard instead of McCook. For Farr Brothers the cost of $5.41 per car looks out of line, but I have not had time to investigate that particular item. (Tr. 188.)

[fol. 533] Page 16 of the exhibit shows switching service and cost on brick from Illinois Brick Company Yard 22 to Illinois Brick Company at Chicago Avenue, via Baltimore & Ohio Chicago Terminal and Belt Railway, in Baltimore & Ohio Railroad cars. (Tr. 188-189.) I do not understand why Baltimore & Ohio cars were taken to Clearing, then hauled to South Chicago and there delivered to the Baltimore & Ohio Railroad, instead of being delivered to the Baltimore & Ohio Chicago Terminal at 22d Street. (Tr. 189.)

Page 17 of the exhibit shows switching service and cost on brick from Chicago Brick Company to Renier Material Company via Baltimore & Ohio Chicago Terminal and

Pennsylvania Railroad, in Baltimore & Ohio cars. This sheet shows that after the cars were unloaded at the Renier Material Company they were hauled to 23d Street by the Pennsylvania Railroad and thence delivered to the Baltimore & Ohio Chicago Terminal at Homan Avenue yard, and then hauled back to Barr yard of the Baltimore & Ohio Chicago Terminal. This movement may be explained, but it looks peculiar. I cannot understand why the cars were not delivered back to the Baltimore & Ohio Chicago Terminal via the route the load traveled. (Tr. 189.) In switching the empty at the 59th Street yard of the Pennsylvania, thence delivering to the Baltimore & Ohio Chicago Terminal at Homan Avenue, it was necessary to make two classifications and a transfer at the 59th Street yard. (Tr. 190.) Hauling the car south to the connection with the Baltimore & Ohio Chicago Terminal at Barr yard, one classification and one transfer would have been saved. (Tr. 189.)

Page 18 shows switching service and cost on gasoline from Standard Oil Company, Whiting, Indiana, to the Standard Oil Company, South Chicago, via Baltimore & [fol. 534] Ohio Chicago Terminal and Chicago, Rock Island & Pacific, in tank cars. This depicts some of the most circuitous routes involved, and time has not permitted study of this movement. It is quite an out-of-line haul, but may be the most economical way in which the traffic could be handled. The Pennsylvania serves the Standard Oil Company, which would afford a route from that company with delivery to the Chicago, Rock Island & Pacific at their South Chicago yard, permitting the latter to deliver to the Standard Oil Company at South Chicago station, which movement involved different lines than the routing shown on this page. (Tr. 190.)

Page 19 of the exhibit shows switching service and cost on gasoline from the Standard Oil Company to Sherwin-Williams Company via the Baltimore & Ohio Chicago Terminal and Pullman Railroad. (Tr. 191.) This is a very long and circuitous haul. The 22d Street yard being the only point of interchange between the Belt Railway and the Baltimore & Ohio Chicago Terminal, the latter is required to haul the traffic way north to that yard. Other available routes would be, from the Standard Oil Company to Barr yard by the Baltimore & Ohio Chicago Terminal, thence to the Illinois Central at Riverdale, and from that yard by the

latter for delivery to the Pullman Railroad at Kensington, thus changing the intermediate line from the Belt Railway to the Illinois Central. This traffic could be routed via Pennsylvania Railroad and other connections through the South Chicago yard, thus avoiding the circuitous route. (Tr. 191.) It appears that the cars in this case, after unloading, were delivered empty to the Nickel Plate Railroad, so that this particular tank car traffic was not charged with a very high percentage of empty movement. (Tr. 192.)

[fol. 535] Page 20 shows switching service and cost on wheat from the Rialto Elevator to the Irondale Elevator at 107th Street by the Belt Railway and the Rock Island. These two elevators are less than a mile apart. The map on page 21 reflects their relative locations. The Rialto Elevator is at location No. 1, the fourth slip, and location No. 2 is the Irondale Elevator. After these cars were unloaded at the Irondale Elevator the operating representative charged an empty return haul to the Chicago, Burlington & Quincy against the switching district movement. The car in question arrived at the Rialto Elevator under load, so that the empty movement was made necessary by traffic that got the car in the Rialto Elevator. It is possible some of this empty movement should be charged to the Chicago switching traffic, because there was some switching district movement after the Rock Island received the car, and it had to return the car to the Chicago, Burlington & Quincy. (Tr. 192-193.) Treating these roads as a system, the empty movement would be chargeable to the prior loading of the car. (Tr. 193.)

Page 21 shows a similar movement, except after unloading it was left at the South Chicago yard of the Rock Island. In this illustration the Belt Railway operating representative assigns an empty car at the South Chicago yard of the Belt Line. It is then shown as switched to the Rialto Elevator for loading, thence taken back to the Chicago yard of the Belt Railway. But the Rock Island representative shows, instead of receiving the car at the South Chicago yard, it received it at the Rosenbaum Elevator tracks, location No. 3 on the map. The operating representatives of the two roads did not synchronize their elements of service or their costs. This shows the desirability of tracing [fol. 536] the exact routes that the cars moved. (Tr. 194.) Very little of that was done in this case; something like 200 cars, all the Indiana Harbor Belt.

In connection with the movement referred to on page 21, the Rock Island shows interchange costs of receiving this car from the Belt Railway through the Rosenbaum Elevator as $3.20, being the industrial switching cost to the Rosenbaum Elevator. (Tr. 194.) Whether that would really apply to the character of service required in making interchange at that point is doubtful.

Page 22 shows switching service and cost on corn from the Rialto Elevator to the American Maize Products Company by the Belt Railway and the Indiana Harbor Belt, loaded in Rock Island cars. (Tr. 194.) After loading these cars at the Rialto Elevator they were hauled to the South Chicago yard of the Belt Railway, there classified, then hauled to Clearing, twice classified there, and thence transferred to the Indiana Harbor Belt and delivered to it at Argo. (Tr. 195.) That road hauled the car, after classification at Argo, to Blue Island, there classified it, and then hauled it to Calumet City, classified it there, thence hauled to Burnham and again classified, and then delivered to the American Maize Products Company. The chart shows a short line route running directly south from the Rialto Elevator through Irondale. A lot of large industries are on that route and a large volume of business moves there. The Northwestern Elevator is in that locality at 118th Street, and the Belt Railway Company has a large volume of cars moving to and from the North Western Elevator. It is possible that this route will be a practical one. It would cut out a large amount of extra mileage. (Tr. 195.)

[fol. 537] Another route involving different railroads would be for the Belt, out of its South Chicago yard, to deliver the traffic to the Pennsylvania in its Colehour yard, the latter serving the American Maize Products Company. (Tr. 196.) If Mr. Barse referred to routing of the Belt Railway from South Gary, interchanging with the Indiana Harbor Belt at Irondale, it would not have to go through the South Chicago yard to the Belt Railway, and could go through their South Chicago district yard. (Tr. 197.) The Belt operates over a line of track paralleling the line used by the Indiana Harbor Belt in that territory. That is not a customary interchange point, although some interchange has been made in the past in that locality. The Pennsylvania, the Elgin, Joliet & Eastern, the Chicago

Short Line, the Belt, the Rock Island and the Indiana Harbor Belt enter that heavy-traffic district. A very large volume of business is in that territory. (Tr. 197.) The distance via the route of movement would probably be 15 or 20 miles in the aggregate. (Tr. 197-198.) The locations on the various pages of my Ex. 13 are drawn to a geographical scale. Their locations are relatively correct as related to the map, but by referring to the switching map and locating the points there gives a perspective, since they are geographically located to each other. (Tr. 199.)

Page 23 shows switching service and cost on corn from J. E. Bastien Grain Company at 12th Street to the Atlantic Elevator Company, via the Rock Island, the Belt Railway and the Chicago, Milwaukee & St. Paul. The exhibit shows the traffic being hauled by the Rock Island to South Chicago, there delivered to the Belt, then via the Belt to the Galewood yard of the St. Paul, the latter road delivering to the Atlantic Elevator. Time has not permitted a study [fol. 538] of this route or whether a more practicable one exists. It may be this is the cheapest one. However, the switching cost at Elevator A at 12th Street on the Rock Island is shown as $6.12 per car, based upon only 6 cars moving in the test period October 19 to October 25, 1927. (Tr. 199.) This seems rather high and not representative. A direct movement from this route could not be made from that elevator at 12th Street to the Atlantic Elevator at Division Street, but there are other lines that would make a shorter haul than this. There is no direct line from this 12th Street Elevator to the Atlantic Elevator, the latter being on an island. (Tr. 200.) It cannot be reached only by the St. Paul through its Division Street yard. There are a number of routes not criticised, which are inserted in my exhibit merely to show how this traffic is handled and how a lot of it is moved. (Tr. 201.)

Page 24 shows switching service and cost on waste paper from the Aetna Waste Paper Company, 24th and LaSalle Streets, to Robert Garr, via the Rock Island, the Belt, and the Chicago & North Western. The Aetna Waste Paper Company is at 24th and LaSalle Streets and the Garr Company is at the North Pier, at the Lake front, northeast from where we are. This merely shows how traffic is handled, and as far as I know I would handle it

the way it moved. I am not saying that is not the most efficient route. It merely shows some of the difficulties experienced in the handling of this traffic. (Tr. 201.)

Page 25 shows switching service and cost on iron and steel from Illinois Steel Company South Chicago plant to J. T. Ryerson & Company via Elgin, Joliet & Eastern, Pittsburgh, Ft. Wayne & Chicago, and the P. C. C. & St. L., really a two-line haul. (Tr. 202.) It shows the traffic was [fol. 539] hauled by the Elgin, Joliet & Eastern directly southeast from the Illinois Steel Company to the Kirk yard of the railroad, there classified and delivered out of that yard to the Pennsylvania at its Clark yard; there classified, transferred to Colehour, where it is again transferred. (Tr. 202.) Kirk yard is outside the switching district. The shipment was classified at Colehour, then transferred to the 55th Street yard of the Ft. Wayne, there classified over the west-bound hump; thence transferred to the east-bound hump and again classified over the latter; thence transferred to the 59th Street yard of the Panhandle and classified there; thence transferred to 16th Street, there classified, and then delivered to Ryerson & Company and the empty car hauled out and delivered to the Belt Railway Company at Clearing. (Tr. 202-203.) There is quite a large volume of business moving from the Illinois Steel Company by the Elgin, Joliet & Eastern, which delivers it to the Belt Railway in its South Chicago yard, just a short distance almost directly west of the Illinois Steel Company. The map shows the Illinois Steel Company on the north bank of the Calumet River, the Belt Railway being just west of the Pennsylvania Railroad crossing. The Belt and the Rock Island own paralleling tracks extending to the gates of the Illinois Steel Company. The Elgin, Joliet & Eastern delivers all loads routed via the Belt at the latter's South Chicago yard, and the crews run back light. The Belt Railway delivers cars out of its South Chicago yard into the Illinois Steel Company's plant, its crews running back light except when cars requiring quick dispatch are handled. (Tr. 203.)

Using this route of delivery to the Belt at its South Chicago yard, thence transporting to Clearing yard and then out of that yard to the Panhandle Railroad at their [fol. 540] 59th Street yard, would result in materially reduced cost, quite a bit less than the $18.00 shown. All two-

line business from the Illinois Steel Company South Chicago plant in connection with the Pennsylvania was routed as shown on page 25. (Tr. 204.) The cost via the route I have named would be cheaper than the route the car moved. (Tr. 204.) The Indiana Harbor Belt was mentioned, but the Belt Railway would really be the originating line. It could haul cars from the Illinois Steel Company just like numerous other railroads do out of other industries under joint switching arrangement, and then deliver to the Panhandle through the Clearing yard, which would make a two-line haul. It would be a cheaper operating cost from the standpoint of the carriers via the route suggested by me. (Tr. 204.) I suppose these cars moved by the route specified by the shipper. (Tr. 205.) It is open to some interpretation whether or not the route suggested by me would constitute a three-line haul, since the Belt Railway has tracks to the gates of the Illinois Steel Company. (Tr. 205-206.)

Page 26 of the exhibit shows switching service and cost from the Universal Portland Cement Company to the Auburn Coal & Material Company via the Elgin, Joliet & Eastern and the Belt Railway. (Tr. 206.) In this movement, after the Belt receives the cars at South Chicago, it hauls them to the Clearing yard; there classified over the west-bound hump, thence transferred to the west departure yard, classified over the east-bound hump, transferred to the east departure yard, thence transferred to Rockwell yard, at a cost of $1.46 per car; again classified at Rockwell yard and delivered therefrom to the Auburn Coal & Material Company. (Tr. 206-207.) After unloading the empties are returned to Clearing east yard flat, there classified, [fol. 541] thence transferred to South Chicago, there classified, and then delivered to the Elgin, Joliet & Eastern. (Tr. 207.) The transfer into Clearing requires four operations in that yard. It would seem that it might be feasible to drop cars for the locality in which this Auburn Coal & Material Company is located at 83d Street yard, making delivery direct therefrom. A lot of questions of this sort have arisen, with no time to investigate, and no operating witnesses have testified for the railroads, explaining these situations. In this particular movement no other transfer cost from Rock Island back to Clearing on the empty car is shown. The transfer cost alone on the load and the

empty between Rockwell and Clearing is $2.92. The Elgin, Joliet & Eastern includes nothing for returning empty cars from the Belt to the Universal Portland Cement Company. (Tr. 207-208.)

Page 27 shows switching service and cost on ice from the Consumers Company at 65th Street to the Consumers Company at Illinois Central freight house downtown on the lake front. (Tr. 208.) This page shows the circuitous route moving this traffic, going south to Colehour yard, which is about 100th Street, thence moving to the Illinois Central at Fordham and then moving to the business district on the lake front. I do not contend there is a cheaper route.

Page 28 shows switching service and cost on vinegar from the Fleischmann Company, 52d Street, to the A. P. Callahan Company, via Pennsylvania Railroad and Rock Island, in tank cars. This is another situation of the kind just discussed. (Tr. 208.) The consignee and the consignor are not far apart, but the loaded car moves south to 123d Street for delivery to the Rock Island. The empty, after unloading, is hauled as far south as Washington Heights, 103d Street, for return to the Pennsylvania Rail-
[fol. 542] road. (Tr. 209.) The Pennsylvania includes nothing for the empty car from its connection with the Rock Island back to Fleischmann Company. If the cars moved back empty, which I do not know, that cost is omitted. (Tr. 209.)

Page 29 shows switching service and cost on corn from Armour Grain Company to American Maize Products Company via Chicago & North Western and Indiana Harbor Belt, in Chicago, Burlington & Quincy cars. After unloading at the American Maize Products Company, district traffic was charged with the empty movement back to Calumet City, there classified, transferred to Blue Island, classified there, transferred to LaGrange and there delivered to the Chicago, Burlington & Quincy. The propriety of assessing district traffic with this empty movement with delivery back to the Chicago, Burlington & Quincy, is questioned. (Tr. 209.) The movement from Armour Grain Company to the American Maize Products Company may be compared with page 22 of the exhibit, showing movement from the Rialto Elevator to the American Maize Products Company. That traffic from the Irondale Elevator on the North

Western, moves via the short practical route via Calumet City direct to the American Maize Products Company. (Tr. 210.)

Page 30 shows switching service and cost of coke from By-Products Coke Corporation to New York Car Wheel Company, via the Chicago Short Line and the Indiana Harbor Belt, in Illinois Central cars. The empty cars are received from the Belt Company, loaded at the By-Products Coke Corporation, and after unloading at the New York Car Wheel Company were delivered to the Illinois Central at Dolton. Time has not permitted study of this particular route, and I do not know there is anything particularly wrong about returning these cars to the Illinois [fol. 543] Central. At the top of the page, under Route No. 400, the initials should be C. S. L. (Tr. 210.)

Page 31 of the exhibit shows switching service and cost on scrap iron from the Pullman Car & Manufacturing Company to the National Malleable & Steel Castings Company via the Pullman Railroad, the Chicago, West Pullman & Southern, and the Indiana Harbor Belt. The railroad records indicate that they were all reloads. (Tr. 211.)

Page 32 shows switching service and cost on iron and steel from the Griffin Wheel Company to General American Tank Car Company via Pullman Railroad, the Belt Railway, and the Baltimore & Ohio Chicago Terminal Railway, in Nickel Plate cars. This is a very similar movement to that shown on page 19 of the exhibit, only in the reverse direction. What I have said regarding page 19 applies to this movement. (Tr. 211.)

Page 33 shows switching service and cost on salt from Morton Salt Company to National Tea Company via Illinois Central, Chicago Belt, and Chicago, Milwaukee & St. Paul, in Illinois Central cars. The operating representative of the Illinois Central shows car interchange to the Belt at the Hawthorne yard of that company. (Tr. 212.) The Belt Railway operating representative indicates delivery of the car to it at Clearing, and includes cost from that location, again indicating the desirability of tracing actual movement of cars. Five sample car numbers were secured from Illinois Central classification costs shown at Congress Street. The Morton Salt Company, checking these numbers, finds that one was a car reloaded at their dock. The top item, 53 cents, should come out on one of these cars.

I do not show the return of that car. I could not say that the Morton Salt Company is north of Kinzie Street on the Milwaukee, as these charts may be a bit inaccurate in this [fol. 544] one respect. (Tr. 212.) We have not known in all cases the exact location of an industry with respect to the yards served by it, and time did not permit making an investigation. (Tr. 213.) Kinzie Street is north of the River, but there is a bend in the river near its mouth where it makes a turn to the north. (Tr. 213.)

Page 34 shows switching service and cost on lumber from the Edward Hines Lumber Company to Richardson Company, via Chicago, Burlington & Quincy and Indiana Harbor Belt. (Tr. 214.) The Burlington, out of its Western Avenue yard, delivered this car to the Indiana Harbor Belt, which hauled it to Elston. It was there classified, thence hauled to Argo, classified there, thence hauled to Norpaul, there classified, and thence back-hauled to the Richardson Company. The Burlington has a shorter route to the Indiana Harbor Belt via LaGrange. (Tr. 214.)

Page 35 shows switching service and cost on crushed stone from Dolese & Shepard to Wisconsin Lime & Cement Company via Chicago & Illinois Western and the Baltimore & Ohio Chicago Terminal in Illinois Central cars. The empties, originating in the Crawford Avenue yard of the Chicago & Illinois Western, were hauled from there to the loading at the quarry; the loads thence being hauled to the Barr yard, there classified, thence hauled to the Homan Avenue yard; there classified, and thence delivered to the Wisconsin Lime & Cement Company out of the Homan Avenue yard. (Tr. 214-215.) The empties were returned to the Illinois Central out of the Barr yard. (Tr. 215.) Whether or not there is a more direct route than this for the return of the empty car, I have not determined, but it would seem to me that the interchange cost of the [fol. 545] Illinois Central at Riverdale is not properly included in the cost. (Tr. 215.)

Page 36 shows switching service and cost on crushed stone from the Riverside Lime & Cement Company to Tuthill Building Material Company via the Chicago & Illinois Western, the Belt Railway and Rock Island, in Chicago & Alton cars. The empties originating at Crawford Avenue yard of the Chicago & Illinois Western were hauled to McCook, loaded at the Riverdale Lime & Cement Company,

and thence hauled back to Crawford Avenue and delivered to the Belt into Hawthorne yard; thence hauled to Clearing and there classified; thence hauled to South Chicago and classified by the Belt there; thence delivered to the Rock Island into its South Chicago yard; thence hauled to the Englewood yard of the Rock Island. (Tr. 215-216.) They were then delivered to Tuthill Building Material Company out of the Englewood yard. (Tr. 216.) The Rock Island, out of its Burr Oak yard, loaded the cars back and delivered them to the Baltimore & Ohio Chicago Terminal in its Barr yard.

Page 37 shows switching service and cost on stone from A. C. McLaughlin at Bellwood to Central Lime & Cement Company at Cragin, via Indiana Harbor Belt and the Chicago & North Western. The empty car originated at Bellwood, thence moved to the A. C. McLaughlin Company for loading; after loading transferred to Norpaul, crossing the North Western connection near Proviso yard; thence backhauled south to Chappell, there classified, thence delivered to Chicago & North Western at Wood Street. The North Western hauled it to 40th Avenue yard, thence to Cragin, from which yard delivery to the Central Lime & Cement Company was made. Delivery to the North Western at its Proviso yard could have been made. (Tr. 216.) My criticism of this movement is that the Indiana Harbor Belt was [fol. 546] the originating line, which had to deliver to the Chicago & North Western some place, and that delivery could have been made through Proviso instead of through Wood Street, the route of movement. (Tr. 217.) Although Proviso is on one of the main lines of the Chicago & North Western, over which high-speed passenger trains are operated, they run switch transfers over that line. It affords an example of the effect which passenger trains have on increasing the cost of handling switching traffic in Chicago. We have not had time to investigate the cost of moving this car via the main line of the North Western through Proviso. (Tr. 217.) It would be difficult to investigate it, because business actually moving the way it does, results in certain unit costs via the route followed. (Tr. 218.) If the unit cost is used via the route suggested, probably the index cost shown by the Chicago & North Western for the elements of service involved in this route would not be representative unless traffic actually moved through that route

and being considered in fixing the level of the cost via the same. (Tr. 218.) I did not say that it costs more over the route used. I said I did not know, but do say it seems the car could have moved via the route suggested. It looks to me like a practicable route, but I do not know.

Chairman Campbell: I presume the carriers will want to answer this testimony when we get to their rebuttal?

Mr. Davis: Certainly.

Chairman Campbell: And show whether or not these routes are practicable; and I assume that is the purpose of the criticism, to bring that very thing out. (Tr. 218.)

The Witness (continuing): I could tell a great deal more about some of these matters if copies of the results of the railroad tests were provided, as shown on Forms 103 and [fol. 547] 107. (Tr. 218-219.) These have not yet been received, and in the time available it has only been possible for me to look into the great mass of detail at which I am merely pointing an index finger. (Tr. 219.)

There are a number of various other routes as to which I have not had time to prepare a written criticism or discussion. There is a route showing movement of brick from Illinois Brick Company's yard 42 to Illinois Brick Company at Melrose Park by the Indiana Harbor Belt and Chicago & North Western (Tr. 219), showing delivery by the Indiana Harbor Belt and Chicago & North Western through the latter's Wood Street Yard. (Tr. 220.) The Chicago & North Western operating representative shows this car delivered to it at its Proviso yard, instead of Wood Street. This is along the line of the discussion a little while ago, except that Melrose Park is just a short ways east of the Proviso yard of the North Western. This movement is via the Indiana Harbor Belt, route No. 1547, and Chicago & North Western, route No. 255. Operating representatives of the two roads did not agree on the route, again showing the desirability of tracing through movement on these cars. (Tr. 220.)

The Crane Company plant is served by Chicago River & Indiana, the Illinois Northern, the Indiana Harbor Belt, and the Belt Railway of Chicago. The Chicago River & Indiana does certain switching in the Crane Company plant, spotting cars, etc. (Tr. 220.) The Crane Company does some of the switching with its own locomotives. (Tr. 221.) The Illinois Northern, the Indiana Harbor Belt and the Belt Railway applied the joint switching costs which

they paid to Chicago River & Indiana to haul cars to and from the Crane Company during September, 1926, period. [fol. 548] Illinois Northern applied the cost of 48 cars, Indiana Harbor Belt 211 cars, and Belt Railroad 50 cars. Recognition should have been given to the fact that the Crane Company does part of the switching.

The Indiana Harbor Belt route No. 84, stone from Consumers Company at McCook to A. K. Brown, Chicago Ridge, charges local switching district movement with delivery of empties back to New York Central. That charge for empties should not be included. (Tr. 221.)

Indiana Harbor Belt No. 294, brick from Illinois Brick Company at Dolton to Whiting Lumber & Coal Company, Whiting, Indiana, charges this single-line haul with delivery to The Rock Island of the empty cars. That charge should come out, these being single-line hauls.

Route No. 198, pig iron from Federal Furnace Company to New York Car Wheel Company, Hammond, Indiana, in Pennsylvania Railroad cars, single-line haul, includes charges for return of cars to the Pennsylvania Railroad at Blue Island. These charges are also questionable, a single-line haul. (Tr. 222.)

Indiana Harbor Belt single-line route No. 3, stone from A. C. McLaughlin to Public Construction Company in New York Central System cars, supplied empty from Norpaul, charges switching district traffic with empty haul from Osborne yard to the New York Central. These charges should come out.

The same thing applies to Indiana Harbor Belt route No. 1, A. C. McLaughlin Company to Public Construction Company at Osborne; also to Indiana Harbor Belt single-line route No. 429 for the same movement.

On route No. 1 were Illinois Central cars delivered to it at Blue Island. The other cars referred to were New York [fol. 549] Central cars. (Tr. 222.)

The Indiana Harbor Belt single-line route No. 17, stone from Consumers Company to Youngstown Sheet & Tube Company, Mark plant, Big Four cars supplies from Norpaul, charges district traffic with empty movement from Norpaul to McCook, which is in direction of return to home road, properly chargeable to the prior movement. The railroads did not investigate as to prior movements. (Tr. 222-223.)

Two-line haul, corn from Armour Grain Company to American Maize Products Company, Chicago & North Western route No. 104, Indiana Harbor Belt route No. 1866, in Chicago, Burlington & Quincy equipment, charges this traffic with cost of returning the empty cars from consignee to the Burlington Railroad at LaGrange. This charge is improper, for cars arrive at Armour Grain Company on road-haul service. (Tr. 223.)

Indiana Harbor Belt route No. 244, Harbison-Walker Company to Inland Steel plant No. 2, includes 2 sample cars reaching Indiana Harbor Belt in road-haul service, the cost of empty return to Illinois Central at Blue Island being charged, and which should be eliminated. (Tr. 223.)

Baltimore & Ohio Chicago Terminal route No. 147, single-line, brick from Illinois Brick Company yard 22 to Crawford Avenue team track, charges this movement with the round-trip cost from Barr yard and return with the empty, and transfer, classification and delivery cost for return thereof to the Baltimore & Ohio, the owning road, which charges should be eliminated. (Tr. 224.)

The Indiana Harbor Belt single-line route 544, Metal & Thermite Corporation to Inland Steel plant No. 2, includes cost of returning empties to the Grand Trunk, the owning railroad. These charges should come out. (Tr. 224.)

[fol. 550] The Indiana Harbor Belt single-line route No. 672, Youngstown Sheet & Tube Company, Mark plant, to Standard Oil Company, Whiting, charges cost returning empties to New York Central from south hump Gibson yard, which should come out.

Indiana Harbor Belt single-line route 527 charges cost returning empties to Chicago, Indianapolis & Louisville at Hammond after unloading at the Inland Steel plant. (Tr. 224.) One of these cars was received at East Chicago plant of Interstate Iron & Steel Company loaded with coal from the Monon Railroad. The prior road-haul movement should be charged with the empty return to the Monon, together with classification and transfer elements. (Tr. 225.)

Indiana Harbor Belt single-line route 488, Interstate Iron & Steel Company East Chicago plant to its South Chicago plant, charges empty return movement of Hocking Valley & Monon cars back to the Monon. One Hocking Valley car was received at East Chicago plant with

coal loading from the Monon Railroad. These charges should come out. (Tr. 225.)

Indiana Harbor Belt single-line route No. 310, Illinois Brick Company to E. A. Keller & Sons, LaGrange, Illinois, charges this movement with the cost of returning empties to the Rock Island at Blue Island. These charges should come out. Shippers' records of sample car numbers checked by them indicate that certain were reloaded where railroads have included costs for spotting or the return of the empty after unloading. (Tr. 225-226.)

Belt Railway single-line route No. 412, containing 4 cars out of 6 which were checked, were reloaded at Corn Products Refining Company. (Tr. 226.) The route sheet includes empty movement charge and transfer to the Clear-
[fol. 551] ing yard of the Belt Railway after unloading. These charges on the four cars should come out.

To illustrate, one of the cars, Chicago & North Western No. 46260, received at Argo under load September 14th; unloaded and released September 15th; reset for loading September 15th and billed out September 20th. (Tr. 226.) The representative of the Corn Products Company knows that the cars remain at its plant. He can testify to that later, if you desire. (Tr. 227.) This particular routing includes charge of $2.01 for switching cost of Corn Products Refining Company. On review of this figure the Belt Railway finds this charge should be $1.02. The charge of $2.01 was applied to 114 cars. (Tr. 227.)

Seven sample cars were taken from three-line hauls, oats from the Armour Grain Company to the Concrete Elevator via the Chicago, Burlington & Quincy, the Chicago Belt, and the Chicago, Milwaukee & St. Paul. (Tr. 228.) One car was reloaded at the Concrete Elevator, and the charge included for switching the empty and the transfer to Galewood yard should be excluded. I presume a witness can be put on for every one of these industries. (Tr. 228.)

Chairman Campbell: But as I say, both sides must depend upon their investigators, and we are going to allow the investigators to go in unsupported unless there is a pretty strong showing that it is intentionally wrong. (Tr. 229).

The Witness (continuing): This is one particular case where the records of the shippers show that they reloaded this car without first returning it to the base yard. I have to rely upon the result of the shippers' check. I have not had a chance to check all of them. (Tr. 230.)

I have said we checked 400 of these indexes and found it necessary to take exception to a certain number of them. [fol. 552] That is as far as I have gone. I am without knowledge as to the result if we checked every one of these indexes and every one of the cars. You might call this a sort of a "spot" check. We have the same opportunity for unintentional errors as the railroads have. (Tr. 231.)

The last route referred to its Chicago, Burlington & Quincy No. 321, Belt Railway No. 2070, and Chicago, Milwaukee & St. Paul No. 54. (Tr. 232.) Two-line haul, cornstarch from Corn Products Refining Company to Calumet Baking Powder Company via Belt Railway route 675 and Baltimore & Ohio Chicago Terminal route 644, charges classification cost at Clearing and transfer from Clearing to Argo on five sample car numbers which were drawn off. Shippers' check shows 2 of the 5 were cars arriving at Corn Products plant under load and were reloaded to the Calumet Baking Powder Company.

Indiana Harbor Belt single-line route 1330, Inland Steel Company to Majestic Iron & Metal Company, includes delivery cost of empty cars to the Inland Steel for loading. The Inland Steel on 2 sample numbers drawn off finds 2 cars were received loaded with scrap iron and returned to Indiana Harbor Belt loaded with scrap iron. (Tr. 232.) The inclusion of empty cost for the 2 cars is wrong. (Tr. 233.)

Indiana Harbor Belt single-line route 362, Inland Steel Company to Union Drawn Steel Company, includes empty delivery cost for loading at the Inland Steel Company. This company's check shows 1 car received by it loaded with scrap iron shipped by the Chicago, Milwaukee & St. Paul Railroad to the Inland Steel Company and was reloaded from the Inland Steel to the Union Drawn Steel Company, Gary. (Tr. 233.)

A three-line haul, pig iron, from Youngstown Sheet & [fol. 553] Tube Company, Iroquois plant, to International Harvester Company, McCormick works, via Chicago Short Line route 204, Indiana Harbor route 1838, and Illinois

Northern route 107. Two of the sample cars moving via this route were received at the Youngstown plant under load, and the charge included for furnishing empties at that plant should be eliminated. (Tr. 233.) The check does not show the line bringing the cars in under load or whether it was the same line that took out the loaded cars, but that would make no difference. (Tr. 234.) The Chicago Short Line is the only road serving that plant. This route includes weighing cost on the loaded car at McCormick plant of 82 cents, and 82 cents weighing cost for the empty. The International Harvester Company pays 90 cents to the Illinois Northern for every car weighed. Credit should therefore be allowed for this payment. (Tr. 234.)

Two-line haul, iron and steel, from Inland Steel Company to Chicago Bridge & Iron Works, via Indiana Harbor Belt route 1641 and Chicago, Rock Island & Pacific route 90, includes empty switching cost from Michigan Avenue yard to Inland Steel plant for loading of five sample cars. The Inland Steel Company check shows each car was received loaded at its plant and reloaded out to Chicago Bridge & Iron Works. (Tr. 235.)

Two-line haul, Inland Steel Company plant No. 1 to A. M. Castle & Company, via Indiana Harbor Belt route 1171 and Chicago, Milwaukee & St. Paul route 36, includes empty movement cost to Michigan Avenue yard for Inland Steel Company for loading, which car was received by the Inland Steel Company under load. Five other cars in the sample were properly handled by the carriers. (Tr. 235.)

[fol. 554] Indiana Harbor Belt single-line route 352 includes empty haul cost after cars were unloaded at Inland Steel Company plant No. 1. Out of 3 sample car numbers Inland Steel Company's records show 1 moved out under load.

Indiana Harbor Belt route 348, single-line, stone from Federal Stone Company to Inland Steel Company plant No. 1, shows out of 5 cars charged with empty haul from the plant, 3 moved out loaded. (Tr. 235.)

Indiana Harbor Belt single-line route 15, stone from Federal Stone Company to Inland Steel Company plant No. 1, includes empty switching cost from plant after unloading, to Michigan Avenue yard, while Inland Steel's records show 3 of the 5 cars sampled moved out loaded. They do not show what the load was. (Tr. 236.)

Indiana Harbor Belt single-line route 522, Hyman-Michaels & Company to Inland Steel Company plant 2, includes empty switching charge from East Chicago yard to Hyman-Michaels & Company for loading. Three out of the 5 cars sampled were reloaded at Hyman & Michaels. This route also includes charge of 62 cents for weighing empty, and the same charge for weighing the load. Hyman-Michaels pay the Indiana Harbor Belt for spotting cars on the scale.

Indiana Harbor single-line route 523, Hyman-Michaels & Company to Inland Steel Company plant 1, includes empty switching charge from East Chicago yard to Hyman-Michaels & Company on 5 cars. This company's records show all those cars were reloads. (Rec. 236.)

Two-line haul, Williams Iron & Steel Company to Inland Steel Company plant 2, via Chicago, Burlington & Quincy route 168 and Indiana Harbor Belt route 1466, includes [fol. 555] empty switching charge from Inland Steel Company plant to Michigan Avenue yard. Inland Steel Company's records show all three cars sampled were reloaded at its plant. (Tr. 237.)

Sellers Manufacturing Company to Inland Steel Company plant 2, via Chicago & North Western route 123 and Indiana Harbor Belt route 1489, includes empty switching charge from Inland Steel Company plant to Michigan Avenue yard. Inland Steel Company's records show that the 6 cars sampled were all reloaded at its plant.

Indiana Harbor Belt single-line route 378, Stock Yards Scrap Iron & Metal Company to Inland Steel Company plant 2, includes classifying charge and furnishing empty to Stock Yards Iron & Metal Company for loading, while this company's records show this car was a reload. (Tr. 237.)

Indiana Harbor Belt single-line route 1332, Standard Steel Company to Inland Steel Company plant 2, includes empty switching charge from Inland Steel Company plant to Gibson yard, and then cost of delivering car to Illinois Central at Blue Island. (Tr. 237-238.) Standard Steel Company received this car loaded with lumber. (Tr. 238.) This empty movement is chargeable to prior lumber load.

Indiana Harbor single-line route 881, Inland Steel Company to Standard Forgings Company, includes cost empty switching from Michigan Avenue yard to Inland Steel

Company for loading. Two of the 5 sample cars reached Inland Steel Company under load; and by it were reloaded to Standard Forgings Company. (Tr. 238.)

Indiana Harbor Belt route 889, and Pennsylvania Railroad route 193-E, two-line haul, iron and steel from Inland Steel Company to Graver Corporation, includes cost empty switching from Michigan Avenue yard to Inland Steel plant for loading. Of 7 sample cars 4 reached Inland Steel Company loaded and were reloaded by it to Graver [fol. 556] Corporation. (Tr. 238-239.)

Indiana Harbor Belt single-line route 376, Illinois Car Manufacturing Company to Inland Steel Company plant 2, includes empty switching charge from Inland Steel Company to Michigan Avenue yard. Four of the five cars sampled were returned to Indiana Harbor Belt loaded outbound with steel. (Tr. 239.)

Indiana Harbor Belt single-line route 650, iron and steel from Inland Steel Company to General American Car Company, includes empty switching charge from Michigan Avenue yard to Inland Steel Company for loading. Three of the four sample cars taken reached Inland Steel Company under load.

Indiana Harbor Belt single-line route 336, Inland Steel Company plant 2 to Crane Company, includes empty switching charge from Michigan Avenue yard to Inland Steel Company for loading. Of the 2 sample cars taken it appears that both were received by Inland Steel Company under load. (Tr. 239.)

Indiana Harbor Belt single-line route 465, Valley Mold & Iron Company to Youngstown Sheet & Tube Company, Mark plant, includes empty switching charge from the Mark plant to Michigan Avenue yard. The records of the industry show that of 5 sample car numbers taken, all were shipped out under load. (Tr. 239-240.)

Indiana Harbor Belt single-line route 210, Youngstown Sheet & Tube Company, Mark plant, to Interstate Iron & Steel Company, South Chicago, includes empty switching charge to the Youngstown Company for loading. Of 4 sample car numbers it is indicated that 2 were received under load and reloaded by the Youngstown Company to the Interstate Iron & Steel Company. (Tr. 240.)

[fol. 557] Two-line Indiana Harbor Belt route 909, Pennsylvania route 54-A, billets from Youngstown Sheet &

Tube Company, Mark plant, to Acme Steel Company, includes empty switching charge from Michigan Avenue yard to Youngstown Company. The company's records show 1 car out of 6 samples was received loaded, and reloaded to Acme Steel Company. (Tr. 240.)

Indiana Harbor Belt single-line haul, route 217, Inland Steel Company to Interstate Iron & Steel Company, South Chicago, includes empty switching charge from Michigan Avenue yard to Inland Steel Company for loading. Two of the three sample car numbers taken appear to have been received under load and were reloaded out. (Tr. 240-241.)

Indiana Harbor Belt single-line route 668, Inland Steel Company to Champion Rivet Company, includes empty switching charge from Michigan Avenue yard to Inland Steel Company for loading. The industry's records show that 1 car of the 5 samples was received loaded and forwarded loaded to Champion Rivet Company. (Tr. 241.)

Indiana Harbor Belt single-line haul, route 245, Harbison-Walker Company to Inland Steel Company plant 1, includes empty switching charge after unloading. It is indicated that 2 of the 4 sample car numbers were reloaded by the Inland Steel Company. (Tr. 241.)

Indiana Harbor Belt single-line haul route 771 includes empty switching charge from Inland Steel Company to the Pennsylvania Railroad at Indiana Harbor. This empty movement would be chargeable to prior loaded movement if the cars reached the Indiana Harbor Belt in road-haul service. (Tr. 241.)

[fol. 558] Leopold & Cohen Iron Company to Inland Steel Company plant 2, Illinois Northern route 200 and Indiana Harbor Belt route 1756, includes empty switching charge from Inland Steel Company plant 2 to St. Paul Railroad. Of 4 cars sampled 1 moved out under load from the steel company's plant. Apparently there was no investigation by the railroad as to the propriety of this interchange service to the St. Paul to this particular switching movement on the remaining 4 cars. (Tr. 242.)

Other routes include element costs which appear out of line. Pig iron from the Youngstown Sheet & Tube Company, Iroquois plant, to Whiting Corporation, via Chicago Short Line route 201, Baltimore & Ohio Chicago Terminal route 668, and Chicago Short Line route 14, includes $3.44 transfer cost to the Baltimore & Ohio Chicago Terminal

at Whiting. This charge looks out of line. Whether it is high because of subnormal volume or because of operating movement required, I do not know. It needs some explanation. (Tr. 242.)

In this route the Baltimore & Ohio Chicago Terminal includes a transfer charge of $1.20 from Harvey Junction to Phoenix, a very short distance away, which charge looks out of line. (Tr. 242.) There is also an included charge of $2.24 per car for transfer from Phoenix to Whiting Corporation, which seems high, and then an industry switch cost of $3.19 at the Whiting Corporation, with a further transfer charge of $1.84 from Whiting Corporation to Phoenix, the latter for moving the empty. (Tr. 242.)

The Baltimore & Ohio Chicago Terminal shows $2.24 cost in one direction from Phoenix to Whiting and $1.84 in the opposite direction. (Tr. 243.) The Baltimore & Ohio Chicago Terminal is the only one making the test that [fol. 559] separates their transfer costs by directions. As a result a lot of incongruities appear. That company has also set up transfers between all intermediate runs on long transfers. (Tr. 243.) To illustrate, the long transfer from Whiting to the connection with the Belt Railway at the latter's 22d Street yard, four piecemeal transfers appear: Whiting to Barr yard, 39 cents; Barr yard to Homan Avenue, 61 cents; Homan Avenue to 48th Avenue yard, 41 cents; 48th Avenue yard to 46th Avenue, 17 cents; then an interchange to the Belt at 22d Street and 46th Avenue of 37 cents, totaling through transfer cost of $1.95 per car. (Tr. 243-244.) This cost was used extensively and applied to a great number of cars.

Indiana Harbor Belt cost from Gibson to Norpaul, a slightly greater distance, is but 64 cents in a through traffic for that movement. (Tr. 244.)

The Baltimore & Ohio Chicago Terminal transfer from Whiting to the Belt at 22d Street and 48th Avenue moves in through trains and the cost should be calculated and assigned on that basis. (Tr. 244.)

The Indiana Harbor Belt singleline route 110, Illinois Car Manufacturing Company at Burnham to Hutchins Lumber & Storage Company at Blue Island, includes industry switching cost of $7.29 for the latter industry, which seems high.

Referring to the element sheets of Indiana Harbor Belt it is based on 5 cars in 7 days. (Tr. 244.) Stone from

the Consumers Company, McCook, to Sumner-Solditt Company, 87th Street, Indiana Belt Route 1038 and Belt Railway Route 748, includes Indiana Harbor Belt transfer cost from Argo to the Belt connection, just a short distance, of $2.31, which cost was applied to a very large number of cars. (Tr. 244.)

[fol. 560] I have located 368 cars to which it was applied; whether to more than that I do not know, but that cost is decidedly out of line when compared to the volume to which it applied in September, 1926. Most of the illustrations used relate to the Indiana Harbor Belt because it was the first road I investigated and I spent more time on it than with any of the others. In a brief way I have reviewed some of the latter roads and their calculations, the result of which I have not had time to review in the way I have the working papers of the Belt, the Baltimore & Ohio Chicago Terminal, the Indiana Harbor Belt and the Pennsylvania Railroad. (Tr. 245.) The working papers of these roads I got first and have worked them as far as I could at the time at my disposal. (Tr. 245.)

The application of all these elements, Mr. Chairman, which they developed, has been since the test was made, and my access to the working papers showing the use of these elements was not until March 8th. (Tr. 247.) I have not had access to the cost for each element of the service which they develop as a result of the test and as applied to the movements. (Tr. 248.) A review of this cost for each element would not mean much unless we find out how many times the railroads use them in the compilation of their cost study.

Before continuing my direct statement, I would like to get a clear understanding as to just what we are to do on this. As I understand it now, nothing is to be done with the particular routes that I have already testified to.

Chairman Campbell: That is all.

The Witness (continuing): The carriers will proceed to investigate the ones which differ from what we show and we will try to agree on those particular ones. On the re-[fol. 561] maining routes which we have not yet discussed, I will prepare a statement showing what they are and outline our exceptions to them, and furnish the same to the carriers prior to the next hearing. (Tr. 250.)

In addition to the criticism of the routes, there are other exceptions found in connection with other phases of the carriers' cost studies (Tr. 251), which, before proceeding with my memorandum, I will discuss. (Tr. 252.)

In the switching district there are a large number of industries served by two or more railroads where each railroad enters the plant with its own engines and spots and pulls cars. (Tr. 252.) In parts of the city that practice has been supplanted by joint switching arrangements where one carrier will do the spotting and pulling for all other railroads. In the southern part of the city there is a lot of that. (Tr. 253.)

The International Lead Company is switched by the Baltimore & Ohio Chicago Terminal, showing a cost of $10.96 per car based upon 3 cars in the test period; the Indiana Harbor Belt shows $2.63 cost per car for 123 cars switched in the test period; the Pennsylvania Railroad shows $7.91 per car cost, 2 cars being switched in the test period. (Tr. 253.) The Bates Expanded Steel Trust Company, the Metal & Thermit Company, the Northern Indiana Public Service Company, Champion Rivet Company, Majestic Iron Company, Chapin & Company, the Super Heater Company, Lavin & Company, E. B. Lannon and Harbison-Walker Company are industries of that type. These are companies for which costs have been shown in the carriers' element sheets. These costs vary all the way from $1.17 per car to $18.62 per car, depending largely upon the number of cars handled. (Tr. 253.)

[fol. 562] A joint switching arrangement would reduce these costs at these industries or other industries switching in a similar manner. (Tr. 254.)

The Hubbard Steel Foundry Company is another one switched by the Baltimore & Ohio Chicago Terminal, the Indiana Harbor Belt and the Pennsylvania Railroad, and the Cicero district is served by the Belt Railway and the Baltimore & Ohio Chicago Terminal, and both companies enter the plants with their own engines, performing switching service.

Two companies for which costs are shown are the La-Salle Steel Company and the Kropp Forge Company. Situations of that kind are throughout the city. The Concrete Elevator Company is another that is switched by both the Chicago & North Western and the Chicago, Milwaukee

& St. Paul. The North Western shows a switching cost of $8.22 and the Chicago, Milwaukee & St. Paul of $1.99 per car. The first is on a loaded car basis and the latter on a loaded and empty basis. That means that they counted the empty car and the loaded one removed as another car. (Tr. 254.)

The manner of interchange of cars between railroads I have not had much time to investigate. But there are many instances where one railroad will move cars to the yard of another and return light, the other railroad performing exactly the same service moving cars to the first road, and its crews returning light. (Tr. 255.) There are instances where one railroad does all the interchange work in connection with particular carriers. The effect of this on the district as a whole, I do not know, but some tendency to increase cost is indicated. One instance referred to this morning is where the Elgin, Joliet & Eastern takes cars from the Illinois Steel Company to the South Chicago yards of the Belt Railway, running back light, and the Belt [fol. 563] moves cars from its South Chicago yard to the Illinois Steel Company, running back light. (Tr. 255.)

Page 43 of my exhibit shows adjustment of switching cost per engine hour, allowing for ownership and maintenance of plant-tracks by the owning industries, and that smaller engines are generally used in industry and weighing service and other services. (Tr. 255.) The railroads have uniformly used the same engine costs for industry service as for other services. (Tr. 256.) Separate engine-hour costs for its two hump yards are used by the Indiana Harbor Belt, but the costs used for all other classification yards and all other services were the same, which method clearly results in an over-charge.

The adjustment shown on page 43 makes allowance for this. I have used $10.00 as the typical cost per engine hour for engines performing industry service and weighing service at industries. (Tr. 256.) This $10.00 is an estimate, but can be verified by the application of a formula for the ascertainment of costs for the various operating expense accounts incident to the operation of engines in industries. In the Chicago district allowances for switching service performed by them are made to certain industries under a railroad formula.

The Standard Oil Company receives $1.75 per loaded car, which includes interest on cost of locomotive and used

in the carriers' cost assignment, and is based on an engine-hour cost of $8.91. (Tr. 256.) The Standard Oil Company uses locomotives with tractive power of 39,000 pounds, comparing favorably with the size of carriers' engines used in industry service. (Tr. 256-257.)

The Indiana Harbor Belt's typical industry engine has 33,700 pounds tractive power, but it uses other engines of [fol. 564] 52,000 pounds tractive power to perform a considerable portion of industry switching. (Tr. 257.) The average tractive power of all engines performing industry switching on the Indiana Harbor Belt during the test period was 38,796 pounds, which is substantially the same as the tractive power of the locomotives used by the Standard Oil Company. (Tr. 257.)

The Federal Furnace Company receives an industry allowance of $1.69. In 1926 its engine-hour cost for the items of expense included in this allowance was $6.38. The Federal Furnace Company owns 3 locomotives, 2 of which have a tractive power of 37,000 pounds; the other is not known.

Ex. No. 2, showing engine-hour costs for industrial railroads, throws some light on engine-hour costs for industry service. Engine-hour costs for maintenance of equipment and transportation service on these railroads, omitting for crossing protection, yard switching, signal tenders, station expenses and joint operating facilities, as compiled from Ex. 2, is as follows: (Tr. 257.) Chicago, West Pullman & Southern, $10.31; Chicago Short Line, $9.04; Chicago & Illinois Western, $10.45; Illinois Northern, $11.57; Pullman Railroad, $11.93. These figures do not include a portion of the general expenses. (Tr. 258.) A substantial portion of engine time in transfer and classification service on these railroads requires the use of heavier tractive power. The tractive power of locomotives of the Chicago, West Pullman & Southern ranges from 22,500 to 44,600 pounds; Chicago & Illinois Western, from 22,680 to 51,041 pounds; Illinois Northern, from 27,400 to 46,000 pounds; Pullman Railroad, from 20,320 to 34,400 pounds.

The average tractive power of locomotives on the Chicago Short Line is 34,275 pounds. (Tr. 258.) The locomotive tractive power of the other railroads in the test is [fol. 565] as follows: Baltimore & Ohio Chicago Terminal, from 26,000 to 45,200 pounds; Belt Railway, from 31,200 to 84,000 pounds; (Tr. 258;) Pennsylvania Railroad, 35,000

to 52,000 pounds; (Tr. 259;) Illinois Central, from 19,440 to 88,400 pounds; Indiana Harbor Belt, from 33,700 to 87,700 pounds.

In shoving cars over the humps the heaviest engines are used; the next heaviest usually assigned to other classification work, transfer and interchange, with some industry service. (Tr. 259.) The assignment of the smallest locomotives to industry service is the general practice. The railroads named are the only ones included in the test which have furnished information as to the tractive power of their locomotives and their assignment. (Tr. 259.)

The average engine-hour cost of the Indiana Harbor Belt, the Belt, the Baltimore & Ohio Chicago Terminal, and the trunk lines would not be representative of industry switching, because smaller type of engine is used for it, smaller than the average engine on these roads or the average used by the trunk lines. Smaller engines cost less for locomotive repairs. (Tr. 259.) They use less fuel, and slightly lower wage rates apply. (Tr. 259-260.)

In view of the foregoing facts, the use of $10.00 as a representative engine-hour cost in industry service seems fair. (Tr. 260.)

The figures on page 43 described as "Adjusted Costs per Engine Hour" result from using the $10.00 per engine hour for weighing and industry service, and raising costs for other services by the amount of reduction made in the weighing and industrial cost.

The next two lines below show percentages of change [fol. 566] in the engine-hour costs for each class of switching service.

The next section shows similar calculations, omitting the Elgin, Joliet & Eastern. The words "Percentage of Charge" on the left-hand side of page 43 should be changed to "Percentage of Change."

I omitted the Elgin, Joliet & Eastern from the lower section of page 43 because 60 per cent of that road's engine hours are in industry switching outside the Chicago switching district (Tr. 260), and because at the Illinois Steel Company at South Chicago all classification work done within the plant was included in the industrial time. (Tr. 261.) The omission of the Elgin, Joliet & Eastern from the calculations makes the percentage of charge more representative. (Tr. 261.) Any one can substitute any engine-hour cost he chooses in these calculations. Perhaps

the engine-hour cost is too low, that something higher should be used, but there is the possibility that a lower cost should be used. (Tr. 262.) Accurate figures cannot be given unless a test is made for the purpose of developing it.

Page 44 of the exhibit shows the estimate of the over-charge switching cost resulting from application of the general average cost per engine hour to industry switching and weighing service on industry property. It shows that the over-charge, including Elgin, Joliet & Eastern in the basis calculations, is 79 cents per car, and omitting the Elgin, Joliet & Eastern from the calculations is $1.03 per car. These are weighted averages for one-, two- and three-line hauls. (Tr. 262.)

In this calculation it is assumed that all industry engine hours and all weighing engine hours are upon property owned and maintained by the industry. (Tr. 262-263.) This is not entirely so. (Tr. 263.) In a few instances [fol. 567] weighing is performed in railroad yards and some engine hours assigned to industry switching include running time on tracks owned by the railroad up to the industry lead. Therefore both amounts of 79 cents and $1.03 are slightly over-stated. (Tr. 263.)

Page 45 is an analysis of car detention, giving distribution point, number of cars according to the number of days' detention. A large percentage of cars show surprisingly large detention, and how much of this is caused by empties and how much by loaded car cannot be told. There are instances of car detention as high as 23 days. If time forms a proper basis for determining car repairs it is inconceivable that such time should be ascribed to switching district traffic. (Tr. 263.)

The railroads have assigned to switching district traffic the car days multiplied by the average repairs per car day. This is not a proper basis. I do not know what a proper basis is. (Tr. 263.) The question has been studied many years by cost analysts, and about the only conclusion that can be reached is to select a basis which produced the most conservative result under the conditions involved in each proceeding. (Tr. 263-264.) I have used the car basis in a number of cases, but with full knowledge that the resulting cost was not the actual cost, but that it produced a conservative result, from my viewpoint. (Tr. 264.) The railroads should have adopted a conservative method,

which from their point of view in this case would mean conservatively low instead of conservatively high, as they have worked it out? I offer a basis which considers the time in service and the mileage of the cars, the two most important considerations in the question of car repairs. (Tr. 264.)

[fol. 568] Exhibit No. 3 shows cost per serviceable car day of 64.35 for repairs, depreciation and retirements for freight cars, and a proportion of the overhead and general expenses, separating this amount between repairs with its proportion of overhead on the one hand and depreciation and retirements with overhead on the other, the average is 49½ cents for repairs and 14.76 cents for depreciation and retirements. (Tr. 264.) A formula prepared by the American Railway Engineering Association after a study, separates the proportion of each maintenance account attributable to use and the percentage not affected by use, which is reproduced on page 1060, March 1932 bulletin of that association and which has been extensively used by railroads and others in cost accounting problems. (Tr. 265.) It shows 65% of freight train car repairs are attributable to uses and 35% not affected by use. Applying these percentages to the repairs per car day, produces 32.23 cents for repairs affected by use and 17.37 cents relate to time. The depreciation and retirements per car day of 14.75 cents added thereto, gives 32.12 cents per car day relating solely to time. The balance of the repairs 32.23 cents affected by use, mileage being the main factor, equals 1.1 cents per car mile, based upon an average of 30 miles per car day during 1926. (Tr. 265.) This gives two basic figures 1.1 cents per car mile, for the used part of car repairs, depreciation and retirements and 32.12 cents per car day for the time proportion of repairs, depreciation and retirements. (Tr. 265.) Estimating 20 miles per trip for single line hauls, not to exceed 40 for two line hauls and not to exceed 50 for three line hauls and applying these costs to such mileage by multiplying them by 1.1 cents, gives for used portion of car repairs, depreciation and retirement, 22 cents per car for single line hauls, 44 cents for two line hauls and 55 cents for three line hauls. (Tr. 266.) The [fol. 569] railroad shows an average of 6.6 days detention for the average single line car, 7.55 for the average two line car, and 8.7 for the average three line car. On page 45 of

the exhibit appears "average detention per day," which should be "per car." Multiplying each of the foregoing figures by 32.12 cents per car day, produces a cost for the time proportion of repairs, depreciation and retirements of $2.11 per single line car, $2.42 for two line car and $2.78 for three line car. Adding these amounts to the mileage part of such costs previously referred to, makes a total of $2.33 for single line cars, $2.86 for two line cars and $3.33 for three line cars. Mileage is assumed to reflect use though not entirely correct since damage to cars in extra switching involved in terminal service and that from loading and unloading cars is ignored. A summary of repairs, depreciation and retirements for 1926 on the eight switching railroads make these switching tests show $784,440. These roads owned or leased 2,656 cars. Normal owner repairs and depreciation would be at least $150.00 per car or $398,400 for all. Deducting this from $784,440 leaves $386,040 representing repairs to foreign cars for which these roads were responsible. They handled 2,642,284 loaded cars in 1926. Dividing $386,040 by 2,642,284 cars, produces 15 cents per car as the repairs for which those roads were responsible. (Tr. 267.) In addition, I worked out under time and mileage basis to allow for damage to cars resulting from switching operations. The 64 cents per car day in carriers exhibits includes such damage and is not the basic figure. It would be improper to augment my figures by 15 [fol. 570] cents for a single line haul, 30 cents for two line haul and 45 cents for three line haul, although I have added these amounts to each of the costs worked out under the time and mileage basis which gives a single line cost of $2.48 per car, two line cost $3.16 per car and three line cost $3.78 per car. The railroads' exhibit shows $4.25, $4.86 and $5.61 for these costs respectively. That exceeds my figures by $1.77 for single line haul, $1.70 for two line hauls and $1.83 for three line hauls. Mine is not claimed to be the correct method but is offered as a basis which reflects both time and mileage with an allowance for switching damage and which may be conservatively low from the railroads' viewpoint. (Tr. 268-269.)

The more important overcharges are:

First: Assessing cost, returning foreign line cars to owning railroad where such cost would be chargeable to prior movement.

Second: From application of test period cost to cars which moved in 1926.

Third: To inclusion of car detention time for tank cars and private line cars for which mileage is paid for but part of haul on some roads.

Fourth: From application of average engine hour costs to engines in industry and weighing service.

Fifth: From application of industry and weighing cost to all cars to and from Inland Steel Company where that company does some of its switching by its own locomotives. 729 one line cars were subjected to these costs, producing a charge of $4,290 and 750 two line cars were subjected to such costs producing $4,414. (Tr. 269.)

[fol. 571] Sixth: From assignment of car repairs on time basis, ignoring other factors affecting car repairs. (Tr. 269.)

Seventh: From excess cost per hundred pounds, shown in final exhibit, due to cars weighing less than the 60,000-pound minimum were used in actual weight instead of on basis of weight on which the rates apply. The effect of this is demonstrated in railroads' Ex. No. 7, where quite a number of commodities with average loading of 60,000 pounds or less. The average used was based on actual loading, in reaching cost per hundred pounds shown in the exhibit, for each commodity as well as the weighted average for all commodities. (Tr. 270.)

Eighth: From omitting demurrage collected from shippers; an item of some importance. I have been unable to spread over all the loaded cars terminating in the Chicago switching district because of inability to secure accurate information.

Ninth: From charging switching traffic with all costs due to delays from superior rights of passenger and road freight trains. (Tr. 270.)

Tenth: From inclusion of higher cost traffic from Gary, Indiana, on two-line hauls. (Tr. 270.)

Eleventh: From use of incorrect engine-hour cost in calculating classification cost at Gibson north and south humps on Indiana Harbor Belt. (Tr. 271.)

Twelfth: From inclusion of rental charges paid Atchison, Topeka & Santa Fe Railway by Illinois Northern. This carrier leases certain tracks from the former, but which the latter maintains. The $1.37 charge applied on all business moving over the leased portion is simply a rental charge, not an operating expense, and is handled as rent in its accounts. This charge should be eliminated, and would decrease average cost on two-line cars 3-½ cents per car and on three-line cars 24 cents.

[fol. 572] Thirteenth: From applying Chicago River & Indiana joint switching costs at Crane Company on all cars to and from Crane Company via Indiana Harbor Belt, the Belt Railway, and Illinois Northern.

Fourteenth: From omitting credit of the weighing rate collected from shippers paying this charge on switching district traffic. (Tr. 271.)

Fifteenth: Over-charge in station expenses of Chicago, West Pullman & Southern, which will be covered in statement of exceptions to be given railroads later on. Tr. 271-272.)

The following is a summary of under-charges, some of which are claimed by the railroads and some of which have been developed by me (Tr. 272):

First: Omitting costs of transporting company material.

Second: Omitting allowance of higher operating costs during winter months than applied during test periods of June, August and October.

Third: Omitting proportion of main track maintenance of trunk lines applicable to switching traffic.

Fourth: Omitting cost returning certain portion of empty cars on intermediate hauls.

Fifth: Omission by some railroads of empty service on two- and three-line cars returned to originating road, and omitting costs from interchange point back to industry of tank and coke cars. (Tr. 272.)

Sixth: Omitting Belt Railway intermediate line costs on traffic between Chicago & North Western and the Penn-

sylvania Railroads, 109 having been interchanged between these roads in September, 1926. The number included in [fol. 573] the study is unknown. (Tr. 273.)

Insufficient time has prevented definite measurement of the importance of these over-charges and under-charges, but it is clear that the railroads' costs are over-stated.

Car repair costs, adjusted as suggested by me, ignoring all other variable items, would reduce the railroads' per car costs for single-line hauls to $14.51, for two-line hauls to $17.26, for three-line hauls to $19.81, and to $16.26 for the weighted average of all. (Tr. 273.)

The reduced single-line per car cost equals 1.7 cents per hundred pounds and makes, on the present 2½ cent rate, an operating ratio of 68 per cent. The reduced two-line per car cost equals 2.01 cents per hundred pounds, and on the present 2½ cent rate gives an 84 per cent operating ratio. (Tr. 273.) The reduced three-line per car cost equals 2.37 cents per hundred pounds, giving on the present 3 cent rate an operating ratio of 79 per cent. The weighted average of these operating ratios, based on the cars shown in Ex. No. 7 for one-, two- and three-line hauls combined, is 76 per cent, compared with the carriers' 84 per cent ratio, without revision of their figures. (Tr. 273-274.) The operating ratio on switching district traffic, with car rapairs adjusted to a more conservative level, is around 76 per cent, but does not take account of various other errors which I have not had time to contrast. (Tr. 274.)

Page 46 of the exhibit shows average operating ratio, investment return earned upon tentative value of the 9 switching railroads operating in the Chicago district for the years 1925, 1926 and 1927. These carriers receive a [fol. 574] high proportion of Chicago switching district traffic revenues, and may be considered fairly typical of the results from switching operations in this territory. (Tr. 274.)

Page 42 of the exhibit shows trunk line costs for each element of service compare favorably with those of the switching railroads, and indicate that switching district rates are about as profitable to the trunk lines as to the switching roads. (Tr. 274-275.)

All included in this exhibit are switching railroads except the Baltimore & Ohio Chicago Terminal, which is also a terminal company sharing the use of some of its facilities

with other railroads. This also applies in a degree to the Chicago River & Indiana, which includes the operations of the Chicago Junction. (Tr. 275.)

Page 47 contains explanatory notes showing how the figures were compiled. Note "H" shows the Belt Railway is owned by 13 tenant railroads using the Belt Railway facilities in connection with their operations, each paying its part of joint operating expenses on a user basis, and in addition paying, on a user basis, a sufficient amount to pay 6% annual dividends on the capital stock.

Some years ago the tenant companies paid large amounts to the Belt upon a proportionate amount of wheelage for each tenant company, these payments being credited to account 508, Joint Facility Rent Income. (Tr. 275.) A reverse situation appears in recent years. The Belt Railway operations have been profitable, which necessitated distribution of excess earnings either in dividends or some other way. To date these payments have been made to the tenant companies on a wheelage basis sufficient to reduce net income to an amount approximating 6 per cent upon the [fol. 575] capital stock, all payments being debited to the credit account 508, Joint Facility Rent Income. (Tr. 276.) Converting the credit into a debit account really compensated the tenant companies for operating over the tracks of the Belt Railway. The payments to the tenant companies are really surplus earnings, distributed on a wheelage instead of on basis of stock ownership, and should be added to the net railway operating income reported to the Commission. (Tr. 276.) Otherwise the Belt can never earn, under this accounting method, more than approximately 6 per cent on its common stock.

On page 46 tentative valuations by the Interstate Commerce Commission have been used for the roads, except as to the Chicago Belt, its valuation being the Commission's final one. (Tr. 276.)

The average operating ratio for the 9 switching roads was 70.24 per cent; their earnings were 6.36 per cent on investment and 8.33 per cent upon tentative value. (Tr. 277.) A high density of traffic prevails on these switching railroads; they grant and receive numerous trackage rights to operate on property of industries in originating and terminating traffic, and require a less margin of profit above operating expenses than if they owned all property on which they operate. (Tr. 277.)

Page 43, sixth line from bottom, shows by combining items in weighing and industrial columns, that $117,000 of switching cost is connected with industry service and weighing service, substantially all of which is on industry property. This equals 15 per cent of total switching expense.

Page 41 shows 40 per cent of district switching expense is connected with industry and weighing service, all performed substantially on industry property. Clearly a less [fol. 576] margin above operating expenses is required for switching district traffic than for other switch traffic handled by the roads. (Tr. 277.)

Page 46 of the exhibit shows switching roads need an operating ratio of 72.2 per cent to permit 5.75 per cent earnings on investment, and 76.8 per cent ratio to earn the same rate on the Commission's tentative valuation. (Tr. 277-278.) Forty per cent of district switching costs being on industry property, as compared with 15 per cent for all switching operations, 5.75 per cent can be earned on district traffic with a ratio higher than 72 per cent, using investment as a basis of value, and higher than 76.8 per cent using the Commission's tentative value as the basis. (Tr. 278.) My analysis, after the adjustments mentioned, shows a switching district operating ratio not far from 77 per cent, which is approximately that prevailing on all switching traffic in the district. (Tr. 278.)

Page 48 shows estimated increase in annual income of switching roads in the district under suspended tariffs and resulting return upon investment, using the tentative valuations.

Page 49 shows the manner of determining estimated revenues per car, which I believe were conservatively estimated. (Tr. 278.) The exhibit shows operating income of these switching roads for the years 1925, 1926 and 1927, adjusted to include increased revenues under the suspended tariffs, would be equal to 7.29 per cent on investment and 9.55 per cent on the Commission's tentative valuation.

That finishes my statement on direct.

Chairman Campbell: It being 4:30 P. M., the hearing will now adjourn until 9:30 o'clock tomorrow morning, May 17, 1928. (Tr. 280.)

[fol. 577] On May 17, 1928, pursuant to the adjournment, the hearing reconvened at Chicago, Illinois, at 9:30 A. M. (Tr. 282.)

Mr. Davis: When I made my objection to Mr. Oliver's exhibits dealing with the tentative valuation, I also included the testimony given in connection therewith.

Chairman Campbell: That may be included, but with the same ruling. (Tr. 283.)

J. P. Haines.

Direct examination.

By Mr. Walter:

I am traffic director of the Chicago Association of Commerce. (Tr. 283.)

Dealing only with the principles believed proper to govern the making of switching rates in the Chicago district, but based upon a careful study, we will show how they affect the development of manufacturing and distribution in Chicago, and our experience under present methods, in effect for approximately seventeen years.

The Chicago Association of Commerce was organized to encourage and promote the best interests of the city in trade, industry and public good. It has a membership of 7,000, 4,000 being receivers and shippers of freight. The Chicago Shippers Conference Association, which I also represent, is composed of 463 of the largest shippers and re- [fol. 578] ceivers located in the Chicago Industrial District. The best interests of the Chicago Receivers and Shippers require free interchange of carload traffic between carriers operating within the Chicago district and a free interchange and further development of traffic between such carriers on the one hand and the Lakeline carriers operating to and from Chicago on the other. (Tr. 284.)

Switching rates should be uniform for all two and three line movements regardless of length of haul and apply alike on all commodities. (Tr. 284.) Prior to 1911, no uniformity in switching services or rates prevailed but as a result of negotiations began in 1909 between carriers and shippers, an agreement known as the Lowrey agreement was reached and submitted to the Illinois Railroad and Warehouse Commission for approval on May 2, 1910; and I offer at this time a copy of the original Lowrey Agreement. The

document was received in evidence, marked "Exhibit No. 14, Witness Haynes". (Tr. 285.)

The Illinois Manufacturers Association, the Chicago Association of Commerce and the Board of Trade of the city of Chicago, presented this exhibit to the Illinois Railroad and Warehouse Commission of Illinois, in behalf of the shipping interests of the Chicago District. The agreement provided for a uniform rate to be assessed by all carriers except for a one line haul the rate was stated as a maximum and was the same as the two line haul rate, namely, 1½ cents per 100 pounds, minimum weight 60,000 pounds per car. If three or more lines participated in the haul, the [fol. 579] charge for each intermediate carrier was not to exceed 1½ cents per 100 pounds. The rate was uniform on all commodities excluding only grain, coal and coke. (Tr. 286.) The exception as to intrastate coal and coke traffic was removed in June, 1927 and in July as to intrastate traffic. The 25 and 40% increases permitted on June 25, 1918 and August 26, 1920 respectively and the 10% reductions on July 1, 1922 are the only rate changes made since the agreement became effective. (Tr. 286.) We do not expect carriers to switch cars at less than actual cost of transportation but believe the best interests of both carriers and shippers will be furthered by uniform rates applicable on all commodities throughout the entire district via all carriers within the district, thus continuing the principles laid down in the original Lowrey agreement. Since the publication of uniform rates on August 1st, 1911, the number of industries located in the Chicago switching district has grown tremendously. In 1911, the industries having private side tracks numbered 1910 and have now increased to approximately 4,500. There are also a large number of smaller manufacturers and distributors who do not have private switch tracks; the exact number of these industries cannot be given. 35 carriers operate within the Chicago district and the industries are scattered throughout this area. Some sections have more industries than others, due in a large measure to their early location and efforts made by some of the carriers to secure new industries. (Tr. 287.) Unless a uniform basis applies throughout the district, centralization of manufacturers and distributors adjacent to the source of supply will result and cause congestion and increased cost to those sections with a loss of

traffic and depreciation of property values in other sections. (Tr. 288.) Many industries are now at points removed [fol. 580] from the congested areas. A forecast of the relocation of industries and loss of investment that would result from subdividing the district is impossible.

A large portion of the tracks of the Indiana Harbor Belt and the Belt Railway of Chicago, are outside the congested area. If switching rates are uniform an industry located at a point within the district best suited to its business, could distribute or secure its products on the same basis as any competitor within the district. (Tr. 288.)

The boundary of the district should be as designed on page two Supplement number two to C. W. Galligan's Tariff, I. C. C., No. 98, Illinois Commerce Commission No. 43, Indiana Railroad Commission No. 18. By the publication of arbitraries and eliminating certain stations from the tariff, the carriers have restricted application of the industrial rates on the North and West sides of the switching district, thus requiring the payment of rates much higher to industries located at the excepted station. (Tr. 289.) A map of the Chicago switching district showing boundaries of the district showing the excepted stations was offered and received in evidence, marked "Exhibit No. 15, Witness Haynes". (Tr. 290.) The red lines on the map show the stations having no joint switching rates. To illustrate, the industrial switching rates of 2½ cents for two line hauls apply to Mayfair on the Chicago and Northwestern Railway, but to Jefferson Park, immediately beyond, switching rates are not published and a combination of local rates or rates made by applying the intermediate rule must be assessed. (Tr. 290.) The green line indicates industries located and assessed an arbitrary of ½ cent per [fol. 581] 100 pounds in addition to the switching rates applicable to other stations within the district. The arbitrary applies on all commodities. (Tr. 290.) The distances to stations at which regular switching rates apply in many instances are greater than to stations to which the higher rates are charged. On the Chicago, Milwaukee, St. Paul and Pacific Railroad, the ½ cent arbitrary is charged at stations Mont Clare to Franklin Park inclusive, and violates Section 4 of the Interstate Commerce Act and Section 40 of the Illinois Commission law and Warehouse Act. It is brought about by interchange of traffic with the Indiana

Harbor Belt at Franklin Park, Illinois. As an example, the shipment originating on the Indiana Harbor Belt destined to an individual on the Chicago, Milwaukee, St. Paul & Pacific Railroad, at Galewood would be transferred to the latter road at Franklin Park and move thence East through River Grove and Mont Clare to Galewood. The Galewood rate is 2½ cents per 100 pounds, minimum weight 60,000 pounds per car, and to River Grove and Mont Clare, the rate is 3 cents with the same minimum weight though the shipment to Galewood passed through River Grove and Mont Clare. (Tr. 291.) To avoid this fourth section departure, the Chicago and Northwestern Railway at Proviso by tariff provision makes interchange between Indiana Harbor Belt and the former at Wood Street and the rates will not apply via Proviso though in many instances via Proviso, the distance would be less and to maintain the ½ cent arbitrary shipments are especially routed by a longer route and a more congested area. (Tr. 292.) The routing of traffic through interchange points in the down town section to avoid fourth section violations by maintaining the ½ cent arbitrary shows the advantage of and necessity for uniform rates within all points within the district. I offer in evidence an exhibit prepared to show the distances and [fol. 582] rates to each list of industries at stations located on the North West Sides of the switch district, which was received in evidence marked "Exhibit No. 16, Witness Haynes." (Tr. 292.)

On page one, I list all stations of the North and West sides of the switching district previously referred to but which do not have the general basis of switching rates. (Tr. 292.) Section one lists stations on the green line of map exhibit No. 15, to which a ½ cent per 100 pound arbitrary is added to the general basis of switching rates. Hereafter these shall be referred to as the arbitrary stations. Section two, Page one lists the stations covered by the red line on map Exhibit 15, to which joint through switching rates are not published. Page two shows distances to stations on Chicago and Northwestern in the switching district to which joint switching rates of 2½ cents per 100 pounds for two line and 3 cents per 100 pound for three line hauls, apply. The distances are from the three principal inter-change yards of that railway. Tr. 293.) Page 3 shows distances from Union Station and

from 3 interchange yards to stations on the Chicago and Northwestern Railway. Section 1, Page 3 shows distances to the arbitrary stations, the average being 10.4 miles. We excluded Proviso in reaching this average because the interchange cannot be made at Proviso. (Tr. 293.) Section 2 of Page 3 shows distances to stations having no joint through rates. The average being 13.1 miles. Had we eliminated distances from Union Station and used aver- [fol. 583] ages from 40th St., and Wood Sts., the Northwestern's two principal interchange yards, the average under section one would have been 10 miles and under section two, 14.5 miles. (Tr. 294.)

Page 4 shows distances from three principal interchange yards of the Chicago, Milwaukee, St. Paul and Pacific Ry., to stations on its line within the Northwest district. Section one of page 4 shows distances to the arbitrary stations and an average haul 7.9 miles. Section 2 of this page shows stations having no joint through switching rates and an average haul of 12.3 miles. Eliminating the distance from the Union Station, the average distance from Galewood and Bensonville yards would be 5.7 miles under section one and 14.8 miles under section two of the exhibit. Page 5 shows distance to stations on the same railroad having switching rates of 2½ cents for two lines and 3 cents for 3 lines hauls with an average haul of 7.8 miles. (Tr. 294.) On this page the average of distances shown in Sections one and two of page 4 and Section 3 are shown, the average to all stations on that line being 8.3 miles. Eliminating the distances from the Union Station the average would be 9.5 miles and the average of section 1, 2 and 3 would be 9.2 miles or less than the average to those points to which the freight switching rates apply. Pages 6 and 7 show rates and earnings per car from industries on connecting line to industries on the Chicago and Northwestern Railway of representative and moving commodities. In the first column at the left appears the names of stations to which regular switching rates do not apply. The stations prefixed by the asterisk have no joint through switch rates; their rates being made by application of the intermediate rule. The stations prefixed with a number sign are the arbitrary stations, having rates in each instance [fol. 584] of ½ cent higher than the rates to stations not so prefixed (Tr. 295.) Stations Deering to Rogers Park

are on the Milwaukee division, Maplewood to Des Plaines on the Wisconsin division, Peterson Avenue to Greenwood Blvd., on the Evanston cut-off, starting at Mayfair and ending at Central St. Page 7, Stations 40th Ave., to Proviso are on the Galena Division. Comparing the Mayfair and Jefferson Park car earnings, the distance from Mayfair to Jefferson Park is 1.1 miles. Earnings to Mayfair are $15.00 for a two line haul and to Jefferson Park, $25.20. The Jefferson Park earnings are on a 36,000 lb. car of acid, based on actual weight, but to Mayfair earnings would not increase with additional tonnage but the additional weight to Jefferson Park would produce increased earnings. On fibre board boxes, the difference between these points is $12.60 per car; iron and steel articles, $42.13 and on refined oil, $24.90 per car. (Tr. 296.) Iron and steel to Greenwood Boulevard produces $7.66 more per car than to Mayfair. The Greenwood movement involves 7 or 8 cars per day, the loading as high as 116,000 pounds for skelp, and on pipe to points in the district, approximately 76,000 pounds per car. (Tr. 297.)

Pages 8 and 9 show the same information as to common brick, soft coal, crushed stone and coke.

Pages 10 and 11 list industries located at stations shown on page 1 of this exhibit which are excluded from the application of uniform switching rates of 2½ cents for 2-line hauls and 3 cents for three-line hauls. (Tr. 297.)

Although not referred to in the original Lowry agreement, the carriers in the first Lowry tariff, I. C. C. No. 6 excluded the application of the rates on outbound or inbound lake traffic interchanged from docks or through public or private warehouses located on the waterfront, when such traffic was in transit either with or without storage [fol. 585] incidental thereto. (Tr. 297-298.) November 1, 1923, the words "that is, when such traffic is in transit (either with or without storage incidental thereto)" were eliminated. This clause excludes from application of switching rates published by C. W. Galligan, all waterborne freight in or out of Chicago. (Tr. 298.)

This restriction should be removed and switching district rates should apply to ex-lake shipments handled from public or private docks or through public or private warehouses. We requested the carriers to cancel the ex-lake exclusion clause and 19 carriers agreed to this revision,

and in Galligan's I. C. C. No. 89, Illinois Commerce Commission 37 and Indiana Railroad Commission No. 16 industrial switching rates on water-borne traffic were made to apply via those carriers. (Tr. 298.) This tariff was suspended and is now under investigation. (Tr. 298-299.) Subsequently certain of the roads, through their committees, made recommendations, through exceptions, for the application of switching district rates on outbound or inbound lake traffic interchanged through or handled over lake line docks. (Tr. 299.) The changes proposed as to lake traffic did not apply on the Chicago & North Western Railroad. (Tr. 300.) Subsequently the committee recommendations were changed and numerous carriers then asked that the original rule excluding ex-lake traffic from the application of district rates be published for their account (Tr. 300), for which, on December 17, 1927, they filed a six-section application to publish the proposed changes, which was denied by the Commission pending the general investigation.

I offer in evidence an exhibit showing rates applicable on ex-lake traffic, compared with rates applicable on ex-rail traffic. (Said exhibit was received in evidence and [fol. 586] marked "Exhibit No. 17, Witness Haines.") (Tr. 301.)

Pages 1, 2 and 3 of this exhibit show present rates on all commodities from industries having docks or warehouses located on Chicago & North Western Railway to industries located on other carriers in the Chicago district. (Tr. 301.) Column 2 shows interchange method, and where the word "Belt" is used it means a three-line haul, the Belt Railway of Chicago being the intermediate carrier. (Tr. 302.)

The Belt Railway is shown as intermediate carrier wherever possible, though interchange could have been made through the Baltimore & Ohio Chicago Terminal or the Indiana Harbor Belt. Acting as intermediate carrier, the Belt receives 1 cent per hundred pounds, but the rate of the Baltimore & Ohio Chicago Terminal and the Indiana Harbor Belt is 2 cents per hundred pounds.

Columns 3 and 4 show rates and earnings on shipments not moved to the industry by boat. Shipments by rail or by motor truck may reach an industry warehouse, or commodities may be manufactured and thence shipped to industries in the district, and each is designated "ex-rail"

and moves at the rates and earnings shown in Columns 3 and 4. (Tr. 302.)

Columns 5 and 6 show rates and earnings per car on shipments handled over docks or through warehouses located on the waterfront. They are combinations of local or proportional rates of the individual carriers participating in the movement, in all instances exceeding the so-called ex-rail rates. (Tr. 302-303.)

Columns 7 and 8 show the extent of excess earnings on ex-lake traffic over other traffic, which ranged from $9.00 to $18.00 per car, though the movement is identically the same, being between the same industries. (Tr. 303.) Ex- [fol. 587] lake traffic is charged from 66.6 per cent to 100 per cent more than is ex-rail traffic. It is almost impossible, where ex-lake and ex-rail traffic are mixed in the same warehouse, to later identify or separate one from the other. There is not more handling on ex-lake business. The car is spotted for loading similar to the situation at an industry.

Pages 4, 5 and 6 show proposed rates of carriers which are now under suspension. This information is of similar character to that on pages 1, 2 and 3. Tr. 303.)

Page 7 shows exceptions to all commodity bases and applies largely to combination rates on ex-lake traffic. (Tr. 304.) These exceptions result because individual carriers naming rates to the junction, with connections, apply different rates on some one or two commodities, probably resulting from a situation peculiar to that carrier. The exceptions differ with each carrier.

Pages 8, 9 and 10 show information similar to that on previous pages, except that we used the Chicago Short Line Railway as originating carrier.

Results are, however, the same, differing only to industries on the switching roads, which differences result from publication by Chicago Short Line Railway of separate tariffs applicable to these movements, which do not contain the clause excluding ex-lake traffic from application. (Tr. 304.)

Numerous carriers have withdrawn the rule, and the Baltimore & Ohio Chicago Terminal, the Chicago & Eastern Illinois, and the Wabash have advised that they would withdraw it. (Tr. 305.) Thousands of dollars have been spent to increase the facilities for the handling of ex-lake

[fol. 588] traffic at Chicago, and continuing the rule excluding ex-lake traffic will greatly retard Chicago's development as a port and minimize the benefits resulting from the improvements of the water service and from the benefit of the waterway from Chicago to the Gulf, which will shortly be completed. (Tr. 305.)

There are industries and warehouses having dock facilities on other lines within the Chicago district. The situation shown, of the Chicago & North Western and Chicago Short Line, is representative of the other carriers. (Tr. 306.)

Cross-examination by Mr. Davis, representing respondent carriers:

The red line upon my exhibit 15 does not correspond with the original boundary covered by the first Lowrey tariff. The red line is the inner zone, but was not the boundary confined to industrial switching. It did apply to the north end when industrial switching rates were open to the entire south end, the blue line. (Tr. 307.) Since then the district has been enlarged to the outer boundary line shown on Ex. 15, with rate changes only as previously stated. It is my understanding that general order No. 28, made by the director general, authorized the increase that applied to trunk lines as well as to the belt lines. (Tr. 308.)

We desire to have a common rate-base in the entire district outlined in Ex. 15. We do not object to the different rate for a two-line haul than for a single-line haul, or for a three- or more line haul higher than a two-line or single-line haul. (Tr. 308-309.) Wherever, under present tariffs, rates in the district are not on that basis, we want them brought in line and to include all rates within the district except as to grain, which has always been an ex-[fol. 589] ception, and for which I am not authorized to speak. We want all rates higher than the present basis brought down to it, and that the basis should apply to all commodities. (Tr. 309.) We want the district rates to apply to all private sidings. (Tr. 310.) The figure I gave does not cover a building which may have 10 or 20 firms, with but one side-track serving it. The figure 4500 was taken from Mr. Galligan's Tariff 22 Series, which lists all industries with private sidings. The agreement referred to with some 19 railroads, which would remove the restric-

tion regarding ex-lake traffic, is not what has been referred to in this case as the "compromise basis." This agreement was at a different time, at a different meeting, but the rates were filed and are under suspension, and are covered in I. and S. Docket 2900. (Tr. 310-311.)

The weights shown on Ex. 16, pages 6, etc., are from the industrial minimum of 60,000 pounds, excepting iron and steel articles shown as 76,600 pounds, which happens to be the actual average loading from Greenwood Boulevard. I have not shown all commodities, but those shown are merely illustrative, but all in the illustrations are heavy-loading commodities. (Tr. 311.) The rates applied were a 60,000-pound minimum, but if the weight runs over actual weight governs. (Tr. 312.)

Page 7 of Ex. 17 is a complete list of all commodities that are not included in the Lowrey agreement, which I feel should be included, and I do not care to express an opinion as to what the level of the rates should be. (Tr. 312.) I am representing and speaking for the entire Chicago district, except as is always the case where many of our members have different views with respect to their own industries, and they always present the individual exceptions as they see best. (Tr. 313.) As to what I have said as to ex-lake rates, I speak for all shipping interests so far as [fol. 500] I know. I do not know of any interests that would take exception to that portion of my testimony. The ex-lake rates are higher than district rates, and we desire to have them the same. We think the ex-lake exceptions should be completely withdrawn, both on inbound as well as outbound lake traffic. (Tr. 313.) I speak for my organization as an organization, which is always subject to individuals therein who have different views. (Tr. 314.) I am not personally familiar with the actual service performed in connection with ex-lake traffic as compared with district traffic, and before concluding the ex-lake rate on coal should be reduced to the district rate, no investigation was made to determine the effect it might have on the movement of coal from Illinois and Indiana to the Chicago switching district, other than the general effect it would have on road-haul movements of all commodities. (Tr. 314-315.) We did have the matter up through the Chicago Coal Association, but on account of different views they decided not to take any action. As far as individual oper-

ators were concerned, there was one outstanding operator and member of our transportation committee, who had no objection. Some coal moves via some lines on the industrial switching rate today. (Tr. 315.)

I am not speaking for the stone industry. (Tr. 316.) I stated that I was not speaking for the grain trade, and any views expressed as to the level of rates and uniformity of them does not apply to grain. Of course grain is such a competitive commodity as related to other markets that that alone occasioned its exception from the original Lowry agreement. As to what the situation is today I do not care to express a view. (Tr. 316.) As early as May 2, 1910, the Association of Commerce took the position that [fol. 591] grain should not be included in the agreement, and it has not changed since then. (Tr. 317.)

Redirect examination.

By Mr. Walter:

It is not to be understood that I oppose the continuation of the present rates on low grade commodities like slag, manure, waste materials and low grade raw materials. (Tr. 317-318.) Each commodity will have to be considered separately on its own merits if there is a condition peculiar to it that justifies a basis lower than the maximum. (Tr. 318.)

George W. Oliver, recalled:

I do not agree with the Saur-Colverston formula in allocating cost of an empty movement to the district switching service where a loaded road haul immediately precedes it. (Tr. 320-321.) In my judgment, the return of the empty is properly chargeable to the prior road haul movement. (Tr. 321.) All that should be charged to empty movement cost would result from the movement between the base yard and the industry. In my judgment, we will have to go much deeper into the assignment of these empty hauls than the carriers have done. (Tr. 322.)

Cross-examination by Mr. Connell, representing respondents:

Referring to illustration, page 29 of Exhibit 13, of where a car was loaded at the elevator of the Armour Grain Com-

pany and given to the Indiana Harbor Belt for delivery to the American Maize Products Co., which, after unloading, was delivered to the Home Road of the Chicago, Burlington & Quincy Railroad at La Grange. Assuming, in answer to your question, that the car came in the road haul service, routed Chicago, Burlington & Quincy, Belt Railway, and was delivered at the Armour elevator by the Belt and was [fol. 592] then switched by the Northwestern and routed out by the Indiana Harbor Belt in the switching district movement and the latter road then delivers the empty to the Chicago, Burlington & Quincy Railroad at La Grange, it makes a different situation. The Indiana Harbor Belt would have to pay per diem on those cars and it is up to it to get cars off its line and return to the owning road as quickly as possible and in such situation it would be proper to charge switching district movement with the cost of return of the empties to the home road. If all roads were considered as a system, this empty movement would properly be chargeable to the prior loaded movement. (Tr. 324-325.) There would still be some question as to whether or not it is proper to view these railroads as a system and if the case as assumed by you is treated by itself as between the Indiana Harbor Belt and the Burlington, the former would have no way of getting the cost of the empty return except from the shipper, but by performing this return service, the Indiana Harbor Belt relieves other railroads participating in the road haul movement of a certain amount of cost and it would seem, viewed from a system viewpoint, to be some argument for not assessing all this return movement against the switching movement traffic. (Tr. 326.) The Indiana Harbor Belt could not get anything out of the line that brought this car to the Armour Grain Company elevator. (Tr. 326.)

Redirect examination.

By Mr. Walter:

The great bulk of cars handled in the Chicago switching district come in under load and go out under load and the switching movement might be regarded as intermediate service to other road hauls.

[fol. 593] Recross-examination:

I do not know to what extent the cars covered by my exhibit No. 13 were routed by the shippers. (Tr. 327.)

The longer routes are available to shippers and the carriers solicited business over them. That is only one phase of the out of line hauls covered by my exhibit. There are loads where the railroad clearly elects to perform an out of line haul. (Tr. 328-331.) The law requires the carriers to observe the routing given by the shipper and I understand that in the movement illustrated on page 19 of Exhibit 13, the Standard Oil Company routed the shipments from its plant at Whiting to the Sherwin Williams Co., at South Chicago, via the Baltimore & Ohio, Chicago Terminal and the Belt Railway of Chicago. (Tr. 328-331.) I had supposed the formula contained more information as to determining the number of days of car detention than is recited on page 19 of the formula, but it has been a long time since I examined the formula. On page 51, under instructions, is the statement "Terminal detention begins when cars are assigned for loading in road freight trains or when received from connecting lines in switch or road service," which gives quite a bit of latitude to the assignment. The term "when cars are assigned" to particular service seems to me to be quite indefinite. (Tr. 332-333.)

Mr. W. J. Hammond

Am traffic manager of the Inland Steel Company and acted as chairman of the advisory committee of the Chicago Shippers Conference Association, which organized the Chicago Switching interests by commodity groups as far as possible. The Inland Steel Company is a Delaware Corporation, with its principal office in Chicago, owning [fol. 594] plants at Chicago Heights, Indiana Harbor, Chicago, and Milwaukee, Wisconsin; Chicago Heights is located on the Chicago and Eastern Illinois, Michigan Central, Baltimore & Ohio, Chicago Terminal, Chicago, Milwaukee, St. Paul & Pacific and Elgin, Joliet & Eastern Railway, 31/2 miles outside the Chicago switching district, but has always enjoyed the same or lower rates to and from the Chicago switching district. (Tr. 334-335.) The Chicago Heights Terminal & Transfer Railway Co. serves the Chicago Heights plant exclusively and performs prac-

tically all switching service for industries located at Chicago Heights. (Tr. 335.) The Chicago Heights plant has operated since 1893 and produces small angles, bars, agriculture implement shapes, special sections and fence posts, which are shipped principally to the Chicago Switching District and points in the South and Southwest. (Tr. 335.) Our Indiana Harbor plant is located on Lake Michigan, about four miles East of Chicago corporate limits and was the first plant located at Indiana Harbor which was the first port established in Indiana on the West side of Lake Michigan. From a small beginning in 1902 with a limited range of commodities, this plant now operates blast furnaces, coke ovens, open hearth furnaces, and produces the entire list of iron and steel articles except wire, nails, tin plate and pipe. (Tr. 336.) The Indiana Harbor Belt & New York Central railroads serve the Indiana Harbor plant; the former handling all the products which are shipped principally to the Chicago district and points in the West and Southwest. (Tr. 336.) Iron ore, coal, oil, acid, limestone, scrap iron, brick, machinery and various alloys are required in large quantities in the production of steel and carriers receive revenue on all these raw materials, a large share of which originates in the Chicago district. These commodities are largely sold on a basis that reflects the transportation cost in the purchase price. (Tr. 337.)

[fol. 595] In 1927, 13,633 cars of raw material originating in the Chicago district were used at the Indiana Harbor plant, with an average weight of 94,888 pounds, $22.66 average per car revenue, total revenue $308,913.71. (Tr. 337.) During 1927, 13,011 cars, principally steel, were shipped from this plant to points in the Chicago switching district; average per car weight, 82,201 pounds, average revenue $20.99, total revenue, $273,172.20. If the proposed increased rates applied to that volume of traffic would produce total revenue for the inbound and outbound movement in 1927, $803,586.13; an increase of $221,500.22, or 38% increase in the total revenue for this service. (Tr. 337.) We sell our products in the Chicago switching district on a delivered basis. We pay the freight charges and any increase therein must be absorbed in the delivered price and cannot be passed to the customers in the switching district. Our company competes with steel mills located in the Chicago switching district at Gary, Indiana

and with mills located in Central Freight Association territory and at St. Louis, Missouri. A 36,000 pound minimum applies on shipments from Central Freight Association territory to Chicago, while shipments moving within the Chicago district require 60,000 pounds minimum. (Tr. 338.) The Indiana Harbor plant is served from the Michigan Avenue yard of the Indiana Harbor Belt and movements between that yard and plant in number of cars are limited by locomotive capacity which affords maximum revenue with minimum service. (Tr. 338.) Frequently the same locomotives handling cars for the Inland Steel Company also in the same trains handle cars to or from the Youngstown Sheet & Tube Co., the Elgin, Joliet & Eastern Road and occasionally, the Baltimore & Ohio [fol. 596] Railroad. (Tr. 339.) Our outbound shipments are classified at our plant tracks and the cars moving through Gibson are handled direct to that station without classification at Michigan Avenue. (Tr. 339.) During Winter months, on account of large volume of inbound coal, deliveries are frequently handled direct at Gibson without classification at Michigan Avenue. Coal from the Baltimore & Ohio and New York Central Railroads is frequently delivered at our Indiana Harbor plant by direct road crews in train loads, and the empty coal cars are returned in the same manner. (Tr. 339.) Our company maintains all tracks, scales, round house and repair shops within its plant, including locomotives, cars, etc., valued at $2,562,000, not including land value or tunnels connecting respective plants. (Tr. 339.) The initial switching from steel plants to industries in Chicago switching district is not always the final movement; approximately 65% of these commodities are further manufactured and forwarded in road haul movement from which the railroads receive their principal revenue which, in their interests, as well as that of shippers, justifies a low switching rate which develops traffic for subsequent road haul movement. (Tr. 340.) The improved highways permit expeditious movement of large volume of tonnage by trucks at low cost. Any switching rate increase will cause diversion of an additional volume of traffic to the highways, moving direct to destination without rehandling, with corresponding loss of revenue to the carriers. (Tr. 340.) I have prepared exhibits showing rates for various industrial centers for one, two and three line hauls. It shows maximum and minimum

rates with proper tariff authority, for offer in evidence which was received, marked "Exhibit 18, witness Hammond." (Tr. 340.) Generally the rates mentioned move switching traffic, but at Pittsburg, the switching rates are [fol. 597] not all commodity rates but have different rates for different commodities. Where ton rates are shown, the rate applies either on gross or net tons as the commodities are rated under official classifications or exception thereto. The Inland Steel shipment data presented here by Mr. Oliver, was furnished through my office. It was obtained from our car records and is correct. (Tr. 341.) The movement from Chicago Heights to Chicago has never been treated as a line haul movement. The rates have always been held on the Chicago level or are lower, although Chicago Heights is not included within the Chicago District. We ask a continuance of the same level of rates which we have always enjoyed from that point, that is, the Chicago rates. (Tr. 342.) In a general way I am familiar with the commission's decision in the Jones & Laughlin case which prescribed 6c for the first 10 mile block, the rate applying from points contiguous to Chicago Heights in to Chicago. From a competitive standpoint, it seemed desirable to give Chicago Heights lower rates for the Chicago district than applies from the contiguous points. Chicago Heights was developed practically upon the basis that exists within the district. The movement from Chicago Heights to the Chicago district is considered a switching movement. (Tr. 343.)

H. H. Bascom was sworn and testified as follows:

Direct examination.

By Mr. Walter:

I am assistant traffic manager Youngstown Sheet & Tube Company, Chicago, Illinois, which is an Ohio corporation with main office at Youngstown, with Chicago district plants located as follows: (Tr. 344.) Indiana Harbor, works including steel mill, coke plant and tin mill; Iroquois plant, South Chicago; and Evanston plant at Greenwood [fol. 598] Boulevard on the Chicago & North Western Railway. We located at Indiana Harbor because the

Lowrey agreement gave the benefit of Chicago rates in all directions, and proper rates for business within the Chicago switching district. (Tr. 345.) Producing one ton of steel requires approximately 7 tons of raw material, including ore, coal, oil, acid, limestone, scrap iron, brick, machinery, etc. (Tr. 346.) A rail haul is required on all the raw materials except some limestone, which comes by boat. Quite a large amount of raw materials, such as scrap iron, stone, brick, machinery, oil, etc., originates in the Chicago district.

At Indiana Harbor we have 30 miles of track costing $380,000, track scales about $56,000, and 13 locomotives representing more than $230,000. (Tr. 346.)

At South Chicago we have, in 13 miles of track, an investment of $270,000; track scales over $15,000.

The track investment at Evanston is over $3,000; track scales $9,000; 1 locomotive at $5500.

Total investment in Chicago district, over $60,000,000.

Our Indiana Harbor plant is adjacent to that of the Inland Steel Company, with operating conditions very similar, and to avoid duplication I subscribe to what Mr. Hammond has already said. (Tr. 346.)

We move skelp from Indiana Harbor to the Evanston plant. The district rates should apply on that haul. It is raw material manufactured at Evanston as pipe, about 80,000 tons per year, moving out in carloads of an average weight of 58 net tons. The present rate of 2½ cents and the North Western's arbitrary of ½ cent added, produces $35.40 per car revenue, or about 63.9 cents per car mile, or 1.1 cent per ton mile. (Tr. 347.) The scrap from this production is all shipped to our Indiana Harbor plant for [fol. 599] resmelting, and the manufactured pipe shipped into the district pays the added revenue into the switching district. The proposed increases, if allowed, would subject the Evanston plant to a double increase, one on inbound raw material and one on outbound product. (Tr. 347.) These increased rates may require the closing of the pipe mill at Evanston and the removal of the pipe machinery to Indiana Harbor, which would eliminate all the increase on raw material movement. (Tr. 348.)

The railroad cost studies indicate per car cost of $11.92 from Indiana Harbor to Evanston. Our present rate produces $35.40 per car, moving in lots of 5 or 6 at a time.

(Tr. 348.) The North Western cost study indicates, on skelp movement to Evanston, a classification at Weber. If classification were at 40th Street, the one at Weber would be unnecessary. (Tr. 348.) At our Evanston plant the North Western merely delivers inbound cars and takes outbound cars from their tracks at our plant, and it has practically no switching cost, as our engine performs all plant switching, for which we receive no compensation. (Tr. 349.)

We have a coal movement by boat which we transfer from the steel plant to the coke plant, at a $4.95 per car basis, in cuts of approximately 20 cars at a time. The charge is merely the transportation from one plant to the other, as we do the spotting at both ends, and applies when loaded in our own equipment. In railroad equipment we pay $9.95 per car.

If the increases proposed were granted, we would have to build a conveyor to handle this coke and coal, or would move other materials by truck, so that the railroads would lose the revenue on that business.

The $11.00 shown in the cost study is exclusive of clerical cost and car detention. (Tr. 349.) Our engine-hour cost [fol. 600] at Evanston is $3.50. (Tr. 350.) In the carriers' cost figures they show $1.85 industrial switch cost at our Indiana Harbor plant, which is the terminal allowance paid by the Elgin, Joliet & Eastern or by the Indiana Harbor Belt, but the average cost at our plant for the past three years has been $2.45 per car. Our coal for interplant switching, on which we pay $9.95 per car, is approximately 70 tons per car.

Cross-examination.

By Mr. Davis:

Skelp which we move from Indiana Harbor to our Evanston plant (Tr. 350) is a piece of steel about 19 feet long and a little more than 9 inches wide, and involves a 2-carrier movement, the Indiana Harbor Belt and the Chicago & North Western Railway. (Tr. 351.) The rate we pay is the regular 2½ cent switching district rate, plus the North Western's arbitrary of ½ cent, which applied to an average loading of 116,000 pounds per car gives $35.40 car revenue. (Tr. 352.) Out of that revenue we get an al-

lowance for switching of $1.83 in Indiana Harbor, which actually costs us $2.45. The 116,000 pound loading average is taken from the total skelp shipments to Evanston during 1926.

Our pipe shipment loads into the district average about 38 tons, because we have to meet the outside competition mentioned by Mr. Hammond that moves on a 36,000 pound minimum. (Tr. 352.) The coal handled at the plant moves about a mile. (Tr. 353.) A viaduct over the Elgin, Joliet & Eastern, the New York Central, the Baltimore & Ohio and the Indiana Harbor would make the distance approximately a half block from one plant to the other. (Tr. 353.)

Our $3.50 engine-hour cost at Greenwood applies to what is called a "teakettle" engine. It does not look like a real [fol. 601] engine, but it does the work. The Indiana Harbor Belt could use that type at an industry similar to ours at Greenwood Boulevard. (Tr. 353.) Ours is a standard-gauge locomotive, having four wheels under the engine. (Tr. 354.) It is what is termed a "camel-back" engine. (Tr. 355.) Three men operate it, switchman, engineer and fireman. (Tr. 355.) I think we pay union wages. (Tr. 356.) The crew works from 7 A. M. to 5 P. M., with an hour at noon for luncheon.

The coal movement which I said might move by truck is between our steel plant and our coke plant at Indiana Harbor. One plant is on the lake and the other is across the tracks of the Elgin, Joliet & Eastern, the New York Central, the Baltimore & Ohio and the Indiana Harbor Belt Railroad. (Tr. 356.) We would not move this coal by truck, but I said we would have to build a conveyor if these increased rates were allowed. (Tr. 357.)

The trucking movement referred to handling sheet bars by truck to the tin mill, which is just south of the coke plant. (Tr. 357.)

R. C. Livingston was duly sworn and testified as follows:

Direct examination.

By Mr. Walter:

I am traffic manager, Interstate Iron & Steel Company. (Tr. 357.) The Interstate Iron & Steel Company is an

Illinois corporation operating three plants in the Chicago district; one at South Chicago, manufacturing steel ingots, blooms, billets, bars and shapes; second, a rolling mill at East Chicago, Indiana, manufacturing iron and steel bars, [fol. 602] shapes and railroad tie plates; and a wire plant at Grand Crossing, Illinois, manufacturing wire rods, wire, wire products and tacks. (Tr. 358.) To secure these industries carriers provided low switching rates, from $3.00 to $6.00 per car, as an inducement to locate on their tracks, and in some cases written contracts provided that they should be permanent. (Tr. 358.)

In 1910 the industrial switching rates in the district were advanced to 1½ cents per 100 pounds, minimum 60,000 pounds, or $9.00 per car. (Tr. 359.) The 1½ cent rate was advanced 33⅓ per cent in 1918, by General Order No. 28, and 50 per cent in 1920 under Ex Parte No. 74. General Order 28 authorized a 25 per cent increase and Ex Parte 74 a 40 per cent. In disposing of fractions the actual increases were 33⅓ per cent and 50 per cent respectively. In 1922 the Commission reduced the rates to the present basis of 2½ cents per hundred pounds, minimum 60,000 pounds, for one- or two-line hauls. (Tr. 359.) The increased size of cars and locomotives on the switching lines has enabled those roads to handle full train loads of heavily loaded cars at a cost of service little, if any, greater than it was in 1910. (Tr. 359.)

The agitation for increased switching rates has always come from two or three lines serving the northwest portion of the Chicago district, which has practically no great industries, and the northwestern lines do not have opportunity to handle switching business in heavy volume. (Tr. 360.) These lines are not really representative switching lines. To illustrate, the Chicago & North Western serves 382 industries in the Chicago district, which are relatively small concerns, such as coal yards, lumber yards, pickle and candy factories, soap and varnish works; while the Indiana Harbor Belt serves 422 industries, many of which are huge steel, cement, oil, car building and chemical plants at which hundreds of cars are switched every day. (Tr. [fol. 603] 360.)

Present Chicago district switching rates are as high or higher than for corresponding service in other large cities, as shown by Hammond's Ex. 18. (Tr. 361.) We had sev-

eral boatload shipments totaling 700 cars switched from our South Chicago plant to the docks at 95th Street and the Calumet River, a distance of 9 miles. (Tr. 361.) Our company made a shipment of the same number of cars from docks at Detroit to plants of the Ford Motor Company and the Detroit Steel Products Company, an average distance of 10.6 miles. (Tr. 361-362.) We shipped the cars by boat to Detroit, and there they moved via Michigan Central to Detroit Terminal and several other routes. (Tr. 362.) There were different routes. (Tr. 363.) On some cars the charge was $24.00, on others $16.00, and on others $18.75. These shipments were sales to be made to the Ford Motor Company, which were moved by rail to the dock here and by boat to Detroit and thence by rail from the dock at Detroit to the Ford Motor Company. (Tr. 363.) In each instance a two-line haul was involved. The average Chicago charge was 56 cents per net ton against an average net-ton charge for the same service at Detroit of 40 cents. The Detroit rates were fixed by the Commission after extended hearings. (Tr. 363.)

In order to ship this material by boat it was necessary to deliver it to our customers in exactly the same form it would be delivered had it moved by all rail. (Tr. 364.) Every bundle was marked and unloaded car for car, so that each car that moved from the dock at Detroit was identical with the car that was loaded at our plant and taken to the docks here. (Tr. 364.) The switching tariffs at Detroit show charges from dock to the industry, and [fol. 604] they contain distance tables and maps from which distances may be ascertained, and that is what I did; but if you mean whether I went over there and walked over the tracks at Detroit, I did not. (Tr. 365.) I know how the cars were actually handled, because I had to O. K. the switching bills.

Switching cars between industries served by private sidetracks have always been on an entirely different basis than line-haul rates, because shipper and consignee furnish terminal facilities. (Tr. 365.) But in many instances line-haul carriers must furnish team tracks for loading and unloading, the chief excuse for high switching rates. (Tr. 366.) Usually the line-haul rates include the switching charges at both ends.

The Jones & Laughlin decision affects line-haul rates to and from Pittsburgh, Cleveland, Indianapolis and St. Louis, and if that scale is to measure switching rates in Chicago district we insist that basis be applied to all other cities in the territory mentioned. (Tr. 366.)

The carriers admit, and the Commission intimates, in the Jones & Laughlin case, that steel is paying more than its share of transportation costs, because it moves largely in open-type cars, it is not subject to loss by theft, damage or weather, needs no icing or heating in transit, loads heavier than almost any other commodity, and for these reasons steel rates should be reduced rather than increased. The custom of Chicago manufacturers for years is to quote steel prices f. o. b. customer's plant, Chicago. (Tr. 366.) The manufacturer thus absorbs the switching charge, which is especially necessary since the abolition of the Pittsburgh base. (Tr. 367.) The line-haul carriers [fol. 605] absorb the switching charges of our competitors located outside the district. Increased switching charge for the Chicago district will change the relationship.

The claimed congestion in the Chicago switching district is not supported by facts. Our Ex. 19 shows movements of 100 cars, 20 to each of 5 different customers, with average detention of 4.7 days from time empty cars were set for loading until their release. Demurrage rules permit 2 days' free time for unloading and 2 days' for loading, which shows the shipments mentioned were handled very promptly. (Said exhibit 19 offered and received in evidence and marked "Ex. No. 19, Witness Livingston.") (Tr. 367.)

The first sheet of the exhibit shows 20 cars moved to C. & G. Spring & Bumper Company, 38th and Laughlin Streets, routed for Indiana Harbor and Chicago Junction. (Tr. 368.) The average days' detention was 3.76. Other sheets show similar illustrations. At the bottom is shown the grand average. Average detention on 100 cars switching from three different plants to five different consignees was 4.77 days.

While some cars in the Chicago district move considerable distances, which is urged as a reason for rate increases, it may be said that distance is but one factor in fixing a proper rate, and is not the controlling factor. (Tr. 368.) The bulk of our business of finished steel articles

from our three plants during March, 1926, moving to destinations within the Chicago district, moved to the downtown district via Indiana Harbor, a distance of 35 miles via that line. (Tr. 369.) Via the Pennsylvania, the same destination, the distance is 16 miles, but based on experience we know the Indiana Harbor Belt moves the cars quicker and more cheaply than the Pennsylvania; as the [fol. 606] former handles full train loads through open country, systematized by divisions, while the Pennsylvania handles in short drags, because its route is through numerous congested freight yards for practically the entire distance. (Tr. 369.) Notwithstanding this the Pennsylvania gives us good service, though in this particular instance the cars seemed to have been hung up in the downtown yards. (Tr. 369.)

It is the general opinion that finished products moving from mill or warehouse to customers' plants constitute the principal business moving under switching rates in the Chicago district. (Tr. 370.) This may be true of many industries, but it does not apply to the steel industry because of the enormous tonnage of raw and semi-finished materials necessary to steel production. Two or three cars of inbound raw materials are required for each car of finished product, and although the inbound material pays slightly lower rates than for switching finished steel, it moves in rather large lots and for short distances only, thus producing a very great revenue. (Tr. 370.)

Much of our raw material originates in the Chicago district, running from 270,000 to 300,000 tons per year, consisting of pig iron, 150,000 tons; billets, 70,000 tons; and scrap iron, 60,000 tons; ingot molds, etc., 10,000 tons; The proposed increases on these commodities would increase our switching charges nearly $150,000 annually. (Tr. 370:) The present Lowrey arrangement for the Chicago switching district should be retained, with exceptions to the Lowrey basis to take care of interplant movement of raw and semi-finished materials. (Tr. 371.) These exceptions have been maintained for many years. Unless continued, our company would be obliged to relocate its plants or use other than railroad switching for its plant-to-plant tonnage. Similar exceptions prevail at Detroit, where switch-
[fol. 607] ing rates were fixed by the Commission. (See Michigan Central Tariff I. C. C. No. 5724, page 36.) (Tr.

371.) We get most of our pig iron in lots of 6 to 12 cars per day for our South Chicago plant from the Federal Furnace, 10 city blocks away. The cars average 50 tons or more, with earnings from $20.00 to $25.00 at present rates, and on the movement the carrier earns about $200.00 in 15 minutes' time on an Illinois intra-state movement. (Tr. 371.)

The portion of the cost study of the Indiana Harbor Belt routes 188 and 884 indicates $5.72 per car for this movement, compared with switching cost of $11.41 on all one-line cars. (Tr. 371.) In neither case is included clerical cost or cost of car repairs. (Tr. 372.) We handled about 1500 cars per month during the year 1927 at the South Chicago plant, and paid nearly $600.00 to the railroads for cars damaged by us. That amount covered all cars billed to us for damage.

Line-haul rate, Chicago to DeKalb, on paint and rosin in carloads is 5 cents per hundred, minimum weight 30,000 pounds, revenue $15.00 for hauling inflammable articles of high value a distance of 58 miles. (Tr. 372.)

The rates on stoves, including gas ranges or heaters, Aurora to Chicago, 6 cents per hundred pounds, minimum weight 30,000 pounds, or $18.00 per car revenue for hauling a valuable commodity liable to damage in transit, which must be carried in costly box cars, a distance of 42 miles. (Tr. 373.)

On these commodities line-haul carriers absorb Chicago district charges to the extent of $12.00 per car; if the Belt is used intermediate, to the extent of $18.30, subject to a minimum charge of $19.00 per car. There are a large number of line-haul rates equally low, but the above illustrate the situation. These rates are found in Chicago & North [fol. 608] Western Tariff I. C. C. No. 9647. (Tr. 373.) We can get all our pig iron from Federal Furnace. All land between Federal Furnace and our plant is owned by the two industries. If the carriers raise these rates, they will lose the business because we will build a track and haul the material ourselves. Both plants own docks on the Calumet river and the movement could be by barge. (Tr. 373.) Increased rates might force us to move our Grand Crossing plant and possibly the East Chicago plant to our steel plant at South Chicago. Other industries would no doubt make similar changes. (Tr. 374.) If proposed ad-

vanced rates are applied to all commodities, the carriers will lose a tremendous tonnage of very remunerative business. This tonnage has been eagerly solicited as it is highly competitive traffic in the Chicago district and is one of the reasons why the carriers, as stated by Mr. Galligan, have been agreeable to the continuation of these exceptions to the Lowrey basis, subject to a minimum of 100,000 pounds. We often load into 3 cars of 70 tons each, 420,000 pounds of material which would ordinarily be handled in 7 cars of 60,000 pounds. (Tr. 374.) Our business, as well as that of other producers and consumers in the Chicago District, has been built up on the Chicago arrangement, with relative high rates as compared with other localities. Shippers and carriers have alike profited by it and in my judgment, the common sense thing to do is let well enough alone. (Tr. 375.) The great bulk of our outbound tonnage is loaded into cars which we have emptied ourselves. We receive considerable more than we ship so we have no trouble about getting cars. It is unnecessary to move empty cars to supply us to any extent except to the extent that our inbound loads exceed our outbound movement. (Tr. 375.)

[fol. 609] Cross-examination by Mr. Davis, representing respondents:

I said there was no necessity for increased switching rates as far as the South and East parts of the Chicago districts were concerned, that the carriers serving the North and West parts, the Chicago Northwestern & Milwaukee, were the ones feeling the lack of money. My closing statement was that they should let well enough alone and I meant that we should have no increase at all as far as our business is concerned. I did not say that it would not help the Chicago, Northwestern or the Milwaukee. It might be better for them to leave the situation as it is. (Tr. 376.) If I was speaking only for myself and my own plants, I would not object to a zoning system which would give the Chicago, Northwestern & Milwaukee where their industries are small, a higher rate as compared with ours. We must consider all our customers throughout the district and their interests and zoning might be bad for them. Speaking individually that would be one solution, but looking at it as a whole, it would not be. I did not say that because

the industries served by the Chicago & Northwestern were small and ours large that we should be given a lower rate. (Tr. 377.) I meant all of the industries down in the Calumet district. And by reason of the heavy volume of business, the carriers handle down there, their costs are very much reduced. It might be reasonable to charge the industries that have only a small volume of business a higher rate than the industries that have a larger volume. (Tr. 378.) On Exhibit 19, a car shown as placed on August 31 and released on September 4, with detention of four days, I think I would count the day it was placed for routing. This covers 1926 business and was taken from our records. It shows car placed for loading at our plant August 31, [fol. 610] released on September 1st and moved to our customer; placed at his plant September 3, and after unloading was released on September 4th, that would count only one of the days used in loading and unloading. The time would depend whether it was placed after 7 A. M. or before 7 A. M., as to a charge for demurrage. Possibly an additional day should be added to each column but even so, it should be a very good record. (Tr. 379.) The record indicates that the Indiana Harbor Belt and Chicago Junction handling the shipment had the car in their possession so far as road haul is concerned; but two days. (Tr. 380-381.)

Cross-examination.

By Mr. Connell:

We load a large percentage of the cars received under load at our plants which between the loading and the unloading require movement from one plant to the other. We do not load them on the track where they were unloaded. (Tr. 381.) My statement was to the effect that the Indiana Harbor Belt switching cost was no greater today than in 1910. My knowledge of service costs on that road in that year is only in a general way. My statement was that the enormous increase in the size of cars and the hauling power of locomotives and in the loading were reasons indicating rate reduction in cost. The cars cost more now than in 1910, as well as locomotives and wages are somewhat higher. (Tr. 382.) It is impossible for me to say what percentage of our tonnage is interstate. (Tr. 382.) The

movement from the South Chicago plant to the East Chicago plant is interstate, but I would say the greater proportion of it would be Illinois intra-state traffic because we have a plant at Grand Crossing, the raw material for which is billets, and is switched generally from our plant at South Chicago where we manufacture the billets. Some billets we get from the Illinois Steel Co., at South Chicago and others from the Youngstown Sheet & Tube Co. (Tr. 383.) [fol. 611] Regardless of the time cars were placed for loading whether at 7. A. M., or later, and basing the time as shown in the last column as from noon to noon, it would give the number of days detained. It was a 50 50 proposition. (Tr. 384.) They do not figure demurrage from noon of one day to noon of the next day if placed after 7 A. M., of one day, demurrage does not begin until 7 A. M., of the next day. We move car load shipments of iron and steel all through the Chicago district. We produce the same articles as the Inland Steel Co., except in addition, we produce wire rods, wire, wire products and tacks. (Tr. 385.) In exhibit 19, I only pick out 20 cars that moved in 1926 between the points shown. (Tr. 386.)

J. T. Forest was duly sworn and testified as follows:

Direct examination:

I am assistant to the President of By-Products Coke Corporation of Chicago, which since 1925, has operated by-product coke ovens and blast furnaces; the largest commercial plant in the country. It is at South Chicago. We operate a coke oven plant located on the Chicago Short Line Railway, with the capacity to carbonize more than 1,500,000 tons of coal per year, producing about 1,250,000 tons of coke. (Tr. 387.) We have a blast furnace plant at South Chicago but on the opposite side of the Calumet river from the coke plant. The blast furnace is on the Indiana Harbor Belt and Pennsylvania Railroads and its capacity is from 400,000 to 450,000 tons of pig iron per year. (Tr. 388.) We have our own yards, tracks, scales and other traffic handling facilities at the coke plant, but do not do our own switching. Chicago Short Line Railway places and removes cars from that plant and shows

in its cost studies $2.00 per car cost. In that plant we [fol. 612] have 15.4 miles of track, including two track scales, costing with equipment, $440,971.43. We have yard tracks at the blast furnaces, formerly owned by Federal Furnace Co., and maintain our own locomotives. We acquired the assets of the Federal Furnace Co., in 1915 and do not have exact cost of the 8.4 miles of track at that plant. Making an estimate based on cost of a small amount of track put in by ourselves, the cost would be $72,432.22 which does not include special cost of high lines of which we have rather important ones, at that plant, nor does it include the real estate in either case. The value of the real estate in our coke plant before the Internal Revenue Department was shown to be about $15,000 per acre and at the furnace plant about $11,000. None of this has been allocated to yard tracks. We maintain three locomotives at the furnace plant referred to yesterday by Mr. Oliver, which cost $29,332.00. The railroads allow us $1.69 per car for spotting, based upon 1916 costs but allow nothing for capital investment or depreciation on trackage. Our locomotives perform our yard switching and deliver the cars to interchange tracks outside our plant operated jointly by the Pennsylvania, and the Indiana Harbor Railways. Our business is highly competitive. (Tr. 389.) As to pig iron, we have competitors from two sources having an advantage over us at the present time. (Tr. 390.) The furnaces in the Birmingham Alabama district have pig iron rates to Chicago and Northern Illinois on a lower basis than the general level of our pig iron rates outbound. Little pig iron reaches Chicago all rail on these rates but a good deal reaches the territory north of the center of Illinois and West of the Mississippi river with which we compete. Barge and rail rates from some Alabama furnaces present still stronger competition even into the city of Chicago. [fol. 613] (Tr. 390.) Cleveland and Buffalo dump their surplus iron here when their surplus is available, through steel plants, which is not a regular part of the business of these competitors. A substantial tonnage comes in by boat on rather low rates and is a very disturbing factor in our business. Some of this iron has moved by boat already this season. We likewise suffer competition from depressed coke rates into Chicago and Northern Illinois from Alabama, Chattanooga, Tenn., Midland, Penn., Weirdon, Va.,

Terre Haute and Indianapolis, Ind., and Granite City, Illinois. We have competition from other points on rates about the level of ours. (Tr. 39[illegible].) The competition from the more distant coke points is chiefly a dumping business. It costs us upwards of $10,000 per month in advertising to develop the coke business we have in the city of Chicago. This excludes coke sales for metallurgical purposes which are handled by direct contact between sales agents and customers. Outside coke coming here does nothing to develop business and therefore the competition is hard at times. The competitive situation mentioned brings out the relationship between inbound rates on these commodities and the switching rates which we must pay. There is no fixed relation between line haul and switching rates but considering competition an increase in switching rates within the Chicago district is equivalent to giving a reduction in line haul rates from outside competing points into the district. (Tr. 391.) Most of our coke business is within the Chicago switching district, as well as a very large proportion of our pig iron business and while unable to state the exact percentage, my belief is that 90% of this business moves intra-state in Illinois. We have very good business over the Indiana line within the switching district. (Tr. 392.) We bill coke, pig iron and other products primarily as requested by customers and secondarily as [fol. 614] solicited by carriers with reference to the kind of service rendered. Shipping clerks naturally pay no attention to railroad costs. Unless complaint of delays in transit or other inconveniences is made by our customers, no particular attention is given to the route followed. (Tr. 392.) A good railroad solicitor may get some business, although his road may be circuitous. (Tr. 392.) We would study a mileage basis very carefully. We are interested in rates and in the service and not in railroad costs except as they are brought up in a case like this. In a circuitous movement that causes delay, we correct the route and get more direct services. Within these limits if is immaterial to us as anyone else until rate cases come up whether the roads haul our commodities 50 miles or 10. There are cases where roads have hauled our commodities 50 miles when even 10 miles or less would have done the work. I have prepared statements regarding tonnages

and cars for the year 1926 by months; four in number. (Tr. 393.) Exhibit covers all car load shipments of pig iron from the Federal Furnace plant during 1926. Exhibit 21 shows miscellaneous car load shipments from the Federal Furnace plant. 22 covers all shipments from the coke plant and 23 covers tracing of certain movements from the plant. (Tr. 394.) The document marked "Exhibit 20, Witness Forrest," was received in evidence. It appears from the exhibit that shipments of pig iron from September make a fair average of shipments for the year; 545 moved in September and the yearly average was 524. Out of a total of 6,290, 2,424 moved within the Chicago switching district and 3,865 moved out of the district. 38.18% of the movement was within and 61.82% was outside of the district. 788 cars were single line shipments on the Indiana Harbor Belt, 910 on the Pennsylvania, and 718 were two line hauls and only 8 were three line hauls. In dividing the movement by line hauls, the September shipments on the average come [fol. 615] close to the monthly average for the year. (Tr. 395.) 1926 was a fair year but not our biggest one. In addition to our shipments representing railroad movements, we shipped hot metal which moves entirely by our own locomotives over our own tracks, which movement has been excluded in the course of this discussion. (Tr. 396.) For the year 1926, the average load was 46.5 gross tons per car or 52.5 net tons per car. On the Indiana Harbor Belt and Pennsylvania railroads for deliveries in the Calumet District, the rate is 40c per gross ton. On other lines to points within the Calumet districts, the rate is 50c. Outside the Calumet district on two line and three line hauls, the rate is 2½c and 3c per 100 pounds respectively. (Tr. 396.) We ship a very large amount of pig iron to the Interstate Steel plant whose property adjoins ours on the South, each plant being serviced by the same railroads. The distance between them is about 10 city blocks. As we deliver cars to the railroads, the haul is about from 112th to 117th sts. The normal time of this movement is about 15 minutes, as our engine sets the cars out. We move 10 or 12 cars per day in one movement, giving average revenue of $18.60 per car or $186.00 per run, that is on 10 cars. It averages a little more than that. (Tr. 397.) The annual tonnage of this movement is about 150,000 tons with a railroad revenue

of about $60,000. An increase of rates affecting this movement would cause the shipper and consignee to join their yard tracks and move the freight entirely within their own properties. The distances between 112th and 117th Sts. is about one half mile. (Tr. 397.) We get $1.69 per car for moving this traffic to the railroad tracks with our own locomotives. (Tr. 397.) The Riverside Iron Works is about two city blocks from our plant. The carriers exhibit indicate average minimum one line hauls for pig iron as one mile, which is somewhat excessive as indicated by my exhibit. (Tr. 398.) The proposed increase would increase [fol. 616] our freight charges on pig iron in the Chicago district about $30,000 per year. Under the original proposal it would have been much more, assuming this short single movement within the Calumet district were put on the basis that has been proposed generally. (Tr. 398.) Exhibit 21 shows shipments other than pig iron from the furnace plant during 1926. We show 497 cars of plant refuse moving by Indiana Harbor single line, 7 cars by Pennsylvania and 420 cars two line haul. Except for three or four cars this refuse was waste slag which sells at a price less than loading cost. We moved it because it was blocking our operations. (Tr. 398). The purchaser sold to railroads who used it for a filling. The Indiana Harbor Belt loads this material at $8.10 per car. Rates on other lines vary but are given at the bottom of Exhibit 21. (Tr. 399.) Scrap iron shipments are such as are not easily melted in our own furnaces. The two cars of iron ore were for some special purpose. The document was offered and received in evidence, marked "Exhibit 21, Witness Forrest." (Tr. 399.) Exhibit 22 gives shipments from the coke plant. It shows total shipments and I will read into the record shipments of material other than coke, the latter being the greater part of total movement. Coke shipments for September 1926 were under the average for the year. It is not as representative a month for coke as it was for pig iron. In 1926, all shipments from the coke plant were 34,936 cars, the greater part being coke. Of this number, 28,816 were within the Chicago district and 6,120 outside; 583 were within the Chicago district, that is, the city of Chicago proper and suburbs and not in Indiana; 17 were out of town. Within the switching district, 5,050 cars were moved one line; 12,648 two lines and 11,118 were three line hauls.

(Tr. 400.) Carriers exhibit 11 of Witness Vivian, gives [fol. 617] coke average loading for one line, 38.7 tons; two line, 36.7 tons and three line hauls 30.1 tons. My average made on the same basis compares fairly with those. In 1926, we shipped 5,050 cars to the Iroquois Iron Works, which line haul, with an average loading of 43.2 net tons, moved via Chicago Short Line in private cars with no allowances paid. (Tr. 400.) The average car revenue on this movement was $17.28 per car, moving in approximately 20 car trains with total revenue of $345.60 per train average. (Tr. 401.) Of the 12,648 two line cars, 8,268 moved from our coke plant to our furnace plant and averaged 37 net tons per load in railroad equipment. Average car revenue was about $18.50 in train loads averaging 20 cars although sometimes more with an average revenue of $370.00 per run. It is a shuttle movement. The coke cars being furnished by the Pennsylvania and kept in this service, moving over to the furnace plant and directly back for reloading. (Tr. 401.) There is empty car movement in the Iroquois and Federal Furnace movement, but a very quick movement in both directions. (Tr. 401.) Of the 19,750 cars of other coke shipments, 6,120 were two line hauls averaging 30.6 tons per car, or a total of 187,272 tons moving and by two lines outside the switching district, while 941,154 tons remained within the switching district. (Tr. 401.) The large movements at the beginning of this statement were to blast furnaces. Considerable tonnage was shipped to foundries and still larger went to coal dealers for domestic fuel. In both these cases the rates are considerably lower than those which are proposed. On single line movements to the Iroquois Iron works the rates are 40¢ per net ton, and on two line haul, to the Federal Furnace, 50¢ per net ton. All rates are shown at the bottom of Exhibit 22. (Tr. 402.) On the 1926 business to the two [fol. 618] blast furnaces mentioned, we would pay increased freight charges of around $170,000 more than in 1926 if the proposed increases are allowed. These increases would fall entirely on the producer and owing to the competition in both pig iron and coke, would subject the producer to an increase of around $200,000 annually. (Tr. 403.) We do not feel that the carriers operating in the northern part of the city in the section known as the outer zone although much nearer to the heart of Chicago than these points in

the Southern part, should have the ½¢ per hundredweight arbitrary in excess of the rates at the present time. (Tr. 403.) Certain red lines on Mr. Haynes map indicate carriers not recognizing the switching district line at all, but in our case, giving the same rate charged to points beyond. For example, around Deering, near the heart of Chicago on a line drawn across to the Lake, our coke rate on the Chicago and Northwestern and St. Paul railroad is the same as the rate to the city of Evanston, one dollar and one cent per net ton. We do not believe that ½¢ arbitrary and line haul rates charged within the city of Chicago should be allowed. (Tr. 404.) As far as our own company is concerned, considering our immediate selfish interests alone, I would not object to a zoning system but as to the interests of the entire industrial community any zoning system would certainly be injurious to Chicago and its industries. (Tr. 404.) What Mr. Haynes has said with reference to maintenance of a uniform system throughout the whole district meets my approval. (Tr. 404-405.) As to Mr. Haynes proposition to ex-lake switching rates within the Chicago district, I am not in accord because of certain distinctions that must well be recognized. (Tr. 405.) A dock receiving freight from lake steamers represents a substantial investment. Handling freight from steamers to cars [fol. 619] represents considerable expense. This justifies ex-lake switching rates differing from an industry loading its material direct into the cars as a part of its regular manufacturing business. Chicago having become a dumping ground for plants which run normally to supply other communities in goods. When their local demand falls off they ship by boat from Buffalo or from Cleveland at about $1.50 per gross ton for pig iron. That is a good deal of a hardship to us. We believe users of pig iron in the Chicago district find production here of convenience and economy to them. The two furnace plants, the Federal and the Iriquois Iron, have a productive capacity in excess of consumption in the city of Chicago and year in and year out consumers here get a lower price and better service because of that fact. Switching rates should be designed for Chicago producers rather than to encourage the dumping on our market of commodities produced elsewhere. Exhibit 22 gives all shipments from the coke plant; of the 28,816 cars, 26,948 were coke and the tonnage figures

given and other facts bearing on coke relate to those. (Tr. 406.) On the movement of these cars the one line 40¢ per net ton, two line haul 50¢, with the exception of 12 cars moving to points on the Elgin, Joilet and Eastern Railroad which is not a party to the Lowrey agreement and which is not generally recognized as a switching road, the charge was 60¢. The three line charge under the Lowrey agreement would be 60¢. In the footnote of my exhibit we show a rate of 70¢ where the arbitrary is charged and a rate of 90¢ on combination of Chicago Short Line, Baltimore & Ohio, C. & C. Railroad, running to $1.01 on a very considerable number of cars shipped to the East side of Chicago. (Tr. 407.) We moved from the coke plant 1453 tank cars containing light oil, ammoniacal liquor and coal tar, 208 of these carrying light oil moved by two lines with the ex- [fol. 620] ception of three cars to the Peoples Gas By Products Co. 1,245 tank cars moved three lines and of these, 120 were coal tar. The ammoniacal liquor moved in our own tank cars; The Barrett Co., owned the cars carrying the coal tar which it purchased from us. Light oil moved in tank cars owned by Peoples Gas By Products Co. No allowance was paid for these tank cars in the switching service. Neither per diem nor mileage allowance was paid on these. (Tr. 408.) In 1927 we shipped a greater number of tank cars than in 1926 but the distribution represented a freer one th-n for the period in 1928. We have shipped still more, a larger portion of which will go to points within the Chicago switching district. Tank cars moved back empty to point of shipment but the absence of expenses to the carrier probably more than offsets the back haul. (Tr. 409.) Where the buyer asks for certain routing, we always give it and we naturally designate the routing, but without reference to what the cost is to the carriers. Where a given routing means a long delay, we try to remove it by finding another route. (Tr. 409.) In the interests of economy there should be some co-ordination of switching service that would remove the very circuitous route. (Tr. 410.) The pig iron moving from Cleveland or Buffalo to Chicago by boat at the $1.50 rate is in tramp steamers, not chartered for the season's service. It has not been continuous but the movement has increased considerably the last year. (Tr. 410.) The Bethlehem Steel Co., for the first time in its history

at its Lackawanna Plant in Buffalo, began to ship to lake points by boat. Exhibit No. 22 was offered and received in evidence, marked "Exhibit 22, Witness Forrest." (Tr. 411.) The document marked "Exhibit No. 23, Witness Forrest," offered in evidence (Tr. 411), is a comparison of carriers' records of certain switching movements with [fol. 621] the actual movement of same cars ascertained by our own car tracers. In some instances we cannot reconcile carriers' work sheets as furnished to Mr. Oliver with the actual movement as shown by our exhibit on ammoniacal liquor moving to the Fleischman Co., a three line haul. (Tr. 412.) As ascertained by our car tracers, the actual movement is a much simpler one involving many fewer services than shown by the carriers representatives who drew up the statements. In these they use elements of cost ascertained in cost studies as used in June and August 1927 but applied to actual movement in 1926. This last statement could not possibly be reconciled even by attempting to admit certain elements of service which evidently did not take place. The first of these statements gives pig iron movement to National Malleable & Steel Casting Co., Bellwood, (Melrose Park) for a one line haul on the Indiana Harbor Belt line railroad. In the first case in handling the load there is a cost element of 69.7¢ for transfer from Blue Island and Norpaul and a classification charge at Norpaul at 58.7¢. (Tr. 412.) These services did not occur at all. The charge for this included in the cost study is there by some oversight. (Tr. 413.) The detail of this tracing I cannot give; but our yardmaster here can be put on the stand. He or his men under him know absolutely what has taken place. The personal experience in the riding of cars to see the actual movements was this year, but in 1926 we went to the railroad records. (Tr. 413.) The two items of the Blue Island and Norpaul transfer and the Norpaul classification, amounting to $1,284.00, should not be included in the railroads' costs. (Tr. 414.) It is the cost merely of transfer from Blue Island to Melrose Park that should take the place of the three items [fol. 622] index Nos. 52, 25 and 135. (Tr. 415.)

We have one case, a rather important one, where we have definite information about the movement. (Tr. 416.) This is the movement of coke from the plant of the By Products Coke Corporation to its Federal Furnace plant, a two-line

haul by Chicago Short Line and Pennsylvania. A classification is shown at 108th Street twice, 33 cents being charged in each case. In the month of September, 1926, 711 cars moved in this way. Sixty-six cents per car amounts to $469.26. This appears to be an over-charge in arriving at the 1926 cost. This is a shuttle movement between the coke plant and the blast furnace, a trainload movement. There is no classification on these cars and none needed. They pause at the Claburne yard near the Federal Furnace, where our engine comes out and hauls them in. (Tr. 425.) I say 66 cents, amounting for the month of September, 1926, to $469.26, is an over-charge or an over-estimate of the cost. (Tr. 426.) I skipped the other two to get to this one, because it is a simple case and one where the movement is so clearly known to our men, being a daily shuttle movement with coke cars going back and forth all the time, taken out of our plant by the Chicago Short Line, left at Claburne yard at the east side of the river and there taken by our engine and pulled into the furnace plant. There is never any occasion for classification and none is made. The classification shown would be by the Pennsylvania Railroad at 108th Street. I mention that it is out of order because it is such a simple case and one where conditions are so fully known. (Tr. 426.)

The second of the sheets gives movement of our coke from our plant to the Southern Car Wheel Company at Hammond, formerly New York Car Wheel Company. Follow- [fol. 623] ing down the line we have the following items which our car tracer says do not belong in the study: Classification at Burnham, 46 cents, that is element No. 6 of the Indiana Harbor Belt; also element 300, Indiana Harbor Belt, weighing empty, 77 cents; element 214, transfer Osborne, 36 cents; element 26, classification Osborne, 49 cents; element 87, transfer Osborne to Gibson, 35 cents; element 12, classification Gibson north hump, 84 cents; (Tr. 427;) element 69, transfer Gibson to Dolton, 42 cents, making a total of $3.69, which our tracer fails to find in the movement, which is without considering delivery of the empty car. (Tr. 428.)

On the third sheet is movement of light oil, Chicago Short Line and Belt Railway to Peoples Gas By-Product Corporation, covering element 110, second weighing at South Deering, 45 cents; element 42, transfer South Chicago to Clearing, 69 cents; element 8, classification at west-bound hump,

32 cents; element 11, classification west yard pull-down, 42 cents; element 17, classification at Hawthorne, 34 cents, totaling $1.77, which do not seem to belong in the study. Elements 102 and 106, being transfer to South Deering and delivered to Belt, our tracer consolidates into a single movement. This would require a deduction of 22½ cents more. The elements to be deducted I make from a comparison of the report from our car tracer with report from the carriers. (Tr. 428.)

The first item, $1.02 transfer By-Products Coke to South Deering, on page 3, should be replaced by one move direct to the Belt, there being a belt interchange there. (Tr. 429.) Element 21, classification at South Chicago for the Belt, is recognized as correct. The next three items are questioned, but we leave in No. 34, Clearing to Hawthorne. (Tr. 429.) I am not prepared to say how the car would move [fol. 624] from South Chicago to Clearing; I have left in the expense Clearing to Hawthorne, but would not put it over the hump at all at Clearing because it would not be there. (Tr. 430-431.) It would be delivered to the Belt at South Deering, moving from there to Hawthorne. If the car actually went to Clearing, then all the items would be in, and then the three should come out. (Tr. 431.)

Mr. Barse: Those moves are made both ways, depending upon the volume of business. Whichever is the more economical volume of traffic considered, the cars are handled that way. (Tr. 432.)

The Witness (continuing): In the cost study they were handled in the most expensive way. The weighing at South Deering should be eliminated from No. 3. (Tr. 432.) This being oil, the general practice in handling tank cars is to take stencil capacity of the car with the agreed weight per gallon. (Tr. 433.) An over-charge amount is not weighed at all. Two weighings are shown. At our plant the light car was weighed, element 110, 45 cents, and the loaded car was weighed at our plant, 45 cents, that is South Deering. Those were the only two. We proposed to cut out one because there was no weighing of the car light. It must have been weighed before that, but not in this movement. (Tr. 433.) Light oil, ammoniacal liquor or tar are purchased by gallonage, which is usually marked capacity of the car. (Tr. 434.) We do not weigh every car light, but we weigh most of them. We weigh often enough to know their

weight. Our own weighmaster does the weighing and is recognized by the carriers. This is entirely at our expense. At the cokeplant we sometimes use our locomotive cranes getting cars to the scales, otherwise the Chicago Short Line [fol. 625] engines put them there. (Tr. 434.) There is no special charge for the second weighing when the railroad does the work. (Tr. 435.) If, however, there is a reweighing of the inbound load, there is a charge in all cases. Ordinarily the railroad does not weigh the empty at all. We do that ourselves.

There is no scale cost to the railroad at either of our plants. The weighing is actually done by ourselves at our own expense. Nothing is done by the railroad except, in instances, to move the car. (Tr. 435.) In this particular case it appears that the car was not weighed but once. Tr. 436.) These cars move in and out of our plant frequently and we know the weight of every one of them. If inspection shows the car empty we might not weigh it light every time it comes in. Weighing of cars loaded with coke or pig iron is very commonly unnecessary on light weight, because it may have been weighed light coming in. A very large proportion of the cars which we sent out under load, whether for linehaul or switching, are cars which have come into our plant under load. (Tr. 437.)

A large proportion of cars we ship under load come into the plant under load. (Tr. 438.) This is not true of tank cars, as they come in empty, nor true of blast-furnace service, whether our own or the Iroquois furnace. These make a shuttle movement and very rarely are they held for back load. The cars coming in loaded are sometimes reloaded at the place unloaded. (Tr. 438.) A coke car going to the furnace plant would be loaded with anything going back to the coke plant, probably slag or something used for filling from there, and that would be where the coke was unloaded. (Tr. 439.) This would be taken by a yard movement of our own. We get $1.69 for the yard movement per engine only when the car goes out. No matter [fol. 626] what is taken in the plant we are paid only for one movement of the car. Our coke cars are not reloaded with back load to any appreciable extent. Leaving out these movements mentioned, a very large proportion of cars are not brought into the plant empty. We have some empty movement, but as in the case of the Interstate Steel, we use cars which come into the plant under load. (Tr.

439.) Both pig iron and coke go out in open top cars, most of which move back towards the line from which they came. (Tr. 440.) We checked the coke movement, which was 711 cars. (Tr. 440.) The information as to the number of cars our men followed I do not have, but I can get and will furnish, with the number to which exceptions were made. (Tr. 441.)

Cross-examination.

By Mr. Davis:

Our coke plant operation at the present location was started in 1905, and is not connected with any other interest. (Tr. 442.) The coke output exceeds the pig iron tonnage. (Tr. 442.) This plant was started for the production of all products that it could get out. Coke by-products were once of greater relative value than they are today, and especially is that true of ammonia. Synthetic methods of obtaining nitrogen have reduced the value of ammonia products. We furnished the City Gas Company with a very large amount of gas, but Peoples Gas By-Products Corporation buys our light oil. It belongs to Peoples Gas, Light & Coke Company. We never sold directly to the gas company any of our by-products. (Tr. 443.) Our by-products do not exceed our coke and pig iron business. (Tr. 444.) They amount to very little compared with coke and pig iron.

The weight of the pig iron cars shown is 46½ tons gross, and net 52½ tons, and means gross or long tons and net [fol. 627] tons respectively. Roughly, 46½ gross tons equals 52½ net tons. (Tr. 444). We have very keen and destructive outside competition. (Tr. 445). This exists on all iron and steel articles, and boat competition is felt in manufactured steel commodities. We have local competition with the Chicago By-Product Coke Company, which operates a large by-product plant here, and they have the same competition we have. (Tr. 445.)

Generally in fixing switching rates, competition in main line or line haul rates should not be considered, but when main line rates are quite notably depressed, it is a matter that can be taken into account. (Tr. 445-446.)

The rate on pig iron from Birmingham to Chicago is $6.01 per gross ton, all rail. (Tr. 447.) The rate barge

and rail is lower. Chicago switching rates are absorbed out of them. The $6.01 rate delivers to any point in Chicago. (Tr. 447.) The present rate was not in the Sloss-Sheffield case. (Tr. 448.) This was a rate published by Southern carriers, lower than the Sloss-Sheffield base, which, after hearing, the Commission permitted to go into effect. (Tr. 448.)

In fixing the switching rates for the Chicago district I do not believe consideration of the line haul rate from Alabama should be given. (Tr. 449.) Switching rates cannot be made by basing them on line haul rates. It is a question of considering what might be an intolerable burden in the raising of rates, above what the traffic could bear, assuming that the carriers are not actually losing money on the existing rates. The reports of all purely switching roads show very good revenue or very good earnings where they depend entirely upon switching service. Nominally our shipping clerks bill all shipments, sometimes at the request of the buyer and sometimes at the solicitation [fol. 628] of the carriers (Tr. 449), assuming that one route is as low as the other. In no case does the shipping clerk know anything about railroad cost. (Tr. 450.)

The shipments shown in Ex. 22 as over two lines could not have been covered by a one-line movement. The one-line movement in this case would be the Chicago Short Line. It takes coke to the Iriquois blast furnace, but at no other point could it deliver coke on its own line. In my exhibits showing two-line hauls there is no movement that could have been handled over one-line. (Tr. 450.)

We think it is rather immaterial to the shipper whether the route is long or is a one- or a two-line haul, except as carriers want to make circuitous routes the basis for higher charges. (Tr. 451). If there are three routes open it would be a safeguard in case of accident or anything of that sort. More routes give better service, but I hold there should be coordination of various switching facilities so that there will be less roundabout hauling and probably less duplication by various switching lines. (Tr. 451.) Coordination would not ordinarily mean one route or the shortest combination of lines, unless there was some special obstacle in the way of quick movement by some combination. (Tr. 452.) There are many cases where special features exist in the movement where a variation in the

rates on the same commodity via one line might be reasonable. (Tr. 452.)

The Indiana Harbor Belt received about 99 per cent of our business, as shown in Ex. No. 21, because the buyer or the purchaser of it wanted it to go there. (Tr. 453.) Most of the refuse is slag which we turn to a contractor. It depends on where the railroad work is going on. The Indiana Harbor took it to certain places where the purchaser [fol. 629] disposed of it. We did not sell it to the railroad nor did the railroad dispose of it. It was sold by the contractor who took it. (Tr. 453.) The Indiana Harbor Belt's rate is $3.90 less than the Pennsylvania, and that would be a reason why the contractor would want it to go by Indiana Harbor Belt. (Tr. 453.) None of our men rode these cars of refuse. (Tr. 454.) If a car comes in to our plant under load we get a switching allowance of $1.69, and if the same car goes out under load we get a similar allowance.

On page 1 of Ex. 23 we claim the car did not go to Norpaul, and that instead of a transfer from Blue Island to Norpaul and classification at the latter, and then transfer from Norpaul to Melrose Park, that the charge should only have been for the transfer from Blue Island to Melrose. (Tr. 454.)

Our men could not go back and ride cars in 1926, but they did ride cars going over the same routes at later periods. (Tr. 455.)

Redirect examination.

By Mr. Walter:

In examining the carriers' studies there were 17 actual cases where we traced the car movements, reported here. (Tr. 456.) There was 1 not included in the carriers' studies, which leaves 16 cost study movements which our men traced. (Tr. 457.) Seven of these were wrong and 9 were correct. (Tr. 457.)

F. E. WEBSTER, in behalf of respondents, sworn and testified as follows:

Direct examination.

By Mr. Richmond:

I am general freight agent of Chicago & Eastern Illinois Railway and have been in the traffic department of that [fol. 630] company over twenty years. (Tr. 458. My testimony will deal with points between the Chicago-Chicago Heights switching district, which cover rates between Chicago Heights and Chicago proper, and between points in Chicago Heights, the same as within this district. (Tr. 459.) These rates are under suspension in I. and S. docket No. 2900, and my testimony will be directed to the matters involved in I. and S. 2900 and General Investigation No. 19610. (Tr. 459.)

The rates under suspension between Chicago and Chicago Heights were published in Agent Galligan's Tariffs I. C. C. No. 90 and 91. These tariffs proposed to put in effect a compromise basis of rates agreed to between the interests at Chicago and Chicago Heights, and the railroads. (Tr. 459.) The Commission held that it would be unjustly discriminatory against Hobart, Indiana, to have the same rates from Chicago Heights to Chicago on hollow building tile as applied within the district. (Tr. 460.) The hollow tile rates from St. Anne, Kankakee, Beaver Hill, Chicago Heights and Hobart were involved, but it is not my belief that that situation affects or involves the general adjustment of switching rates within the Chicago-Chicago Heights switching district. (Tr. 460.) From my knowledge of the situation in this territory I do not know of another rate situation like that between Chicago and Chicago Heights. (Tr. 461.)

The development at Chicago Heights began in 1889 or 1890 by the Chicago Heights Land Association, which owned a large tract of land, mainly farms, surrounding a place named Broome, now Chicago Heights. The Chicago Heights Terminal Transfer Railroad was built by the Chicago Heights Land Association to serve industries located at Chicago Heights. (Tr. 461.) Prior to 1900 various rates [fol. 631] applied between Chicago and Chicago Heights, but in 1900 the Chicago & Eastern Illinois made a contract with the Chicago Heights Terminal Transfer Railroad

whereby the former agreed to maintain a rate of $5.00 per car between Chicago and industries at Chicago Heights served by the Chicago Heights Terminal Transfer Railroad. (Tr. 461.) In 1905 this contract was revised and the rate made $5.50 per car of 60,000 pounds, approximately 18.3 cents per ton. (Tr. 462.) The $5.50 per car rate was maintained until May 1, 1917, when under order of the Illinois Commission there was established, in lieu thereof, specific commodity rates between Chicago and Chicago Heights on a commercial parity in rates with industries in the then defined switching district limits published in Lowrey's Tariff I. C. C. No. 36. (Tr. 462.) Revisions of these rates have been made since 1917, but in these the rates between Chicago and Chicago Heights have been made approximately the same as rates within the Chicago switching district and as at present published in Galligan's Tariff I. C. C. 63, Illinois Commission 21, which brings up to date rates, rules and regulations published prior and known as the Lowrey agreement. (Tr. 462-463.) These switching rates apply inter-terminal within the Chicago switching district. Intra-terminal or single-line switching rates under the Lowrey agreement were published by individual roads. (Tr. 463.)

The present rates between Chicago Heights and Chicago give to the Chicago Heights industrial district approximately the level of rates in effect in the Chicago switching district, as defined in Galligan's Tariff I. C. C. No. 98, and are published in Baltimore & Ohio Chicago Terminal Railroad Tariff I. C. C. No. 360 and Chicago & Eastern Illinois Tariff I. C. C. No. 248. The rates are published by the railroads named because Chicago Heights is not within [fol. 632] the geographical limits of the Chicago switching district as defined in Galligan's Tariff I. C. C. No. 98. In the proposed tariffs under suspension, however, Chicago Heights is included as a part of industrial Chicago, and in disposing of this proceeding we hope the southern boundary line of the Chicago switching district will include Chicago Heights so that all industries thereat may have the same tariffs, publishing rates, etc., as apply to Indiana Harbor, Hammond, Harvey, etc. (Tr. 463.) The Chicago & Eastern Illinois Railroad desires the inclusion of Chicago Heights within the now defined Chicago switching district, and that Chicago district switching rates apply thereto.

(Tr. 464.) For the past twenty years the Chicago & Eastern Illinois Railway has given Chicago Heights approximately the same level of rates as industries located within the Chicago switching district. (Tr. 464.) The Chicago Heights Terminal Transfer Railroad is a separate and distinct carrier from the Chicago & Eastern Illinois. It is a separate operating terminal carrier, and in applying rates between that terminal company and its connections, including the Chicago & Eastern Illinois, it must be considered as a two-line haul. When moving beyond the terminal rails and its direct connections shipments move in a three- or more line haul. (Tr. 464.)

Speaking for the Chicago & Eastern Illinois and the Chicago Heights Terminal, we will be satisfied if Chicago Heights is given the same rates, rules and regulations as apply from, to and between industries in the Chicago switching district located at Harvey, Indiana Harbor and other points within said switching district. (Tr. 465.) This should be done by extending the Chicago switching district boundary line south of Dolton on the Chicago & Eastern Illinois to include Chicago Heights. Movements from an [fol. 633] industry on the Chicago & Eastern Illinois Railway at Chicago Heights Terminal to a point on the Chicago & Eastern Illinois would be a two-line haul. (Tr. 466.)

I have five exhibits. (Tr. 466.) The first is a blue print map showing the industrial situation at Chicago Heights, the line of the Chicago Heights Terminal Transfer Railroad and other roads serving Chicago Heights, the different roads designated by a key color. (Tr. 467.) Approximately 88 industries at Chicago Heights are on the line of the Terminal Railroad. In fact, practically all except two or three are on the terminal railroad. One or two of these are on the Chicago & Eastern Illinois. (Tr. 467.) We think there is no discrimination because an industry located on the Chicago Heights Terminal would have to pay rates for a two-line haul as against an industry on the Chicago & Eastern Illinois paying for a single-line haul, as situations of that character exist all through the Chicago district. (Tr. 468.) The Chicago River & Indiana is owned by the New York Central, but traffic moving over the former and the latter is a two-line haul. It is the same as the situation between the Chicago Heights Terminal and the Chicago & Eastern Illinois; and no different treatment is being

asked for Chicago & Eastern Illinois or the Chicago Heights Terminal Transfer Railroad than already exists in the Chicago district. (Said map was offered and received in evidence and marked "Ex. No. 24, Witness Webster.") (Tr. 468.)

My second exhibit, No. 25, is a map of the Chicago switching district showing the boundaries of the original district in 1911, the changes subsequent to the year 1912, and the change suggested by the Chicago & Eastern Illinois to include Chicago Heights. (Tr. 469.) The map shows a number of changes made since the establishment of the original [fol. 634] boundaries, and the last have been made to extend south of Harvey to Homewood, Illinois, on the Illinois Central. Homewood is almost a stone's throw across from Chicago Heights. (Said exhibit offered and received in evidence and marked "Ex. No. 25, Witness Webster.") (Tr. 469.)

A meeting was held and attended by executive traffic officers of quite a few Chicago lines, and the exhibit includes my report thereof made to Vice President Ford of our company.

Mr. Davis: We object to Ex. No. 26 as it throws no light on this case.

The Witness (continuing): It is a part of the history of the situation. (Tr. 470.)

Chairman Campbell: If it is merely a matter of history—we will let it go in. (Tr. 471.)

The Witness (continuing): That is all.

Chairman Campbell: But if it is intended to bind anyone we will reject it. It may be received as a matter of history only. (Tr. 471.)

(Said exhibit offered and received and marked "Ex. No. 26, Witness Webster.") (Tr. 472.)

Exhibit 27 is copy of a letter written by the president of the Chicago & Eastern Illinois to the Chicago Heights Land Association, setting forth the rate of $5.50 as a part of the operating contract entered into in May, 1907, which I offer in evidence.

Mr. Davis: Objected to as immaterial.

The Witness (continuing): This is historical also.

Chairman Campbell: And therefore it will be received as a matter of history only and with no binding force upon the Commission or anyone connected with the proposal. (Tr. 472.) The objection is overruled and it is received as a matter of history.

[fol. 635] (Said exhibit was received in evidence and marked "Ex. No. 27, Witness Webster.")

The Witness (continuing): My Exhibit 28 illustrates the present and proposed rates applied to iron and steel in effect at the present time between industries at Chicago Heights and at Chicago. It sets forth rates and earnings on a minimum car, 60,000 pounds minimum, for two-, three- and more line hauls. It shows rates between the points mentioned here the same as rates within the Chicago district for two-, three- or more line hauls. (Said exhibit received and marked "Ex. N. 28, Witness Webster.") (Tr. 473.)

Cross-examination.

By Mr. Cardy:

Chicago Heights has had substantially the same level of rates as applied in Chicago for over twenty years, and in our proposed adjustment we do not intend to disturb that situation. (Tr. 474). Based on conditions at Chicago Heights there is a commercial necessity requiring substantial parity of rates as between that point and points within the Chicago switching district. (Tr. 475.) The Chicago & Eastern Illinois owns the capital stock of the Chicago Heights Terminal Railroad. A more complete history of Chicago Heights development and of the Chicago Heights Terminal Railroad is found in I. C. C. Finance Docket 6175. (Tr. 475.)

The operating conditions in moving traffic between points in the district and from Chicago Heights to the district are substantially the same, though we have an operating man who is perhaps better qualified to testify to that than I am. (Tr. 476.) In making the proposed change we propose to cancel the south bound rates from Chicago Heights that are lower than from the Chicago district and to make [fol. 636] Chicago rates apply southbound from Chicago Heights. (Tr. 476). These lower rates apply on all traffic.

(Tr. 477.) There may be similar changes in the reverse direction. If certain points north have rates lower than from Chicago Heights we propose to put them all on the same basis, with the assistance of the other Chicago lines. (Tr. 477.)

Chairman Campbell: You told me when you got through that you would explain that Hobart situation, but I do not see explanation of it yet.

The Witness (continuing): I have not had a chance, Mr. Commissioner. (Tr. 477).

With respect to movement of hollow building tile from Chicago Heights versus Hobart, as against St. Anne, Kankakee and Beaverville into Chicago, it appears to me there was no more justice in making rates from Chicago Heights on the basis of what might be termed a road-haul rate, $1.05, than there was to change the rate from West Pullman, the point at which the Hobart complainants had a plant. (Tr. 478.) They had the advantage of the Chicago switching district rate and Chicago Heights had that rate. While I am not criticising the Commission, I think in disposing of that case justice would have been done by dealing only as with Hobart, St. Anne, Kankakee and Beaverville and leaving the Chicago Heights rate on the Chicago basis, where it belonged. (Tr. 478.)

In dealing with commodities like sand, gravel, hollow building tile, brick or other common commodities that are produced at points relatively near Chicago, there would be no stopping of the proposition if discrimination exists. (Tr. 479-480.) But if you start with your base rate and the theory of the Hobart case applies, you are getting down to the principle of relating switching rates to road-haul rates, or relating road-haul rates to switching rates, and [fol. 637] commercially that cannot be done. (Tr. 481.) Chicago Heights is 26.6 miles from a station in Chicago. (Tr. 481.) From the Rock Island station in Chicago to Joliet is about 37 miles; from Chicago to Waukegan is 37 miles, and to Elgin around 35 or 37 miles; and to Aurora 36 or 37 miles. (Tr. 482.) From Chicago to Chicago Heights is 26.6 miles; to Homewood 23.4 miles; to Gibson transfer, Indiana, 25.3 miles; to Hammond 20.6 miles; to South Hammond 24.6 miles; Osborne 24.2 miles; Whiting 24.1 miles; Globe 25, the latter a new point put in the dis-

trict by the Pennsylvania Railroad for one or two industries located there. (Tr. 482.) If that can be done the extension of the district lines to Chicago Heights, with its 88 industries, is certainly justified. (Tr. 483.) Taking into consideration competition, service, relation between industries, other traffic, etc., I would say 3½ cents is a reasonable rate for the distance between Chicago and Chicago Heights. I did not take into account the congested territory or the value of the property, etc. I was merely considering operating service. Commercial competition, the necessity for creating an industrial center, the new tonnage that we know is profitable tonnage, were the matters considered by me. (Tr. 483.) If switching rates in the Chicago district are to be based on valuations of terminals, the rates of 3, 3½ and 4 cents should be thrown out of the window. (Tr. 484). The hollow tile plant at Hobart, Indiana, is owned by the National Fireproofing Company, which also owns a plant in Pullman, Illinois, in the Chicago district.

To put Hobart, Indiana, on the Chicago switching basis is a matter for the Pennsylvania Railroad to determine in the first instance. (Tr. 485.) That what is purported to be a spreading or an extension of the Chicago Switching District is nothing more than a gesture. We have it today [fol. 638] and we have had it for fifteen or eighteen years. (Tr. 487.) But regarding Chicago Heights, if the proposed rates should go into effect between Chicago Heights and the Chicago District, it gives to the former, nothing but what it has had for many, many years in the form of rates. (Tr. 488.) I cannot say how many car loads of freight the Chicago Heights Terminal Transfer Railroad Co., originates per year, but the number runs into many thousands. (Tr. 488-489.) I did not look into the question before the Chicago & Eastern Illinois purchased the stock of the Chicago Heights Terminal Transfer Railroad. I have a general idea of the traffic originated by the latter road. It is something over 40,000 cars in and out. All industries at Chicago Heights on the Chicago & Eastern Illinois Railroad are shown in Galligans Tariff No. 10. There are two or three and I would not say this railway steel spring is a small industry. It is only as to the industries on our railroad that would get one line haul rates if our proposal is approved by the Commission. (Tr. 490.)

The Chicago Heights Terminal and the Chicago Junction Railway and the Chicago River and Indiana are comparable. I do not know the number of cars originated by the Chicago Junction, but I know its trackage and about its industries served. They were very comparable. They are both short lines.

We think Chicago Heights should have the switching district rate basis because it would give industries at Chicago Heights the same treatment as industries located at Harvey, Indiana Harbor or at Hammond. (Tr. 942.) If the district is enlarged to include Chicago Heights it would be necessary to have the co-operation of the other railroads and in my historical statement it is shown that all of the railroads in trying to work out the Chicago-Chicago Heights situation agreed that it was proper that Chicago Heights [fol. 639] should be included. (Tr. 493.) The simplest way to keep Chicago District boundary lines from spreading is to have the boundaries fixed by the commission.

The hearing at 5 o'clock P. M., adjourned to May 18, 1928 at 9:30 A. M. (Tr. 494.)

Pursuant to adjournment, hearing reconvened Chicago, May 18, 1928, 9:30 A. M. (Tr. 496.)

R. J. Pierce called in behalf of Chicago Heights interests was sworn and testified as follows. (Tr. 496.)

Direct examination.

Mr. Cardy:

Am Secretary, traffic manager of the Manufacturers' Association of Chicago Heights and have been since April 23rd of this year and have been engaged in railroad, industrial and commercial work for the past 21 years. (Tr. 496.) Since associating with the Manufacturers' Association, I have made an investigation of rates, charges and conditions pertaining to the movement of car load traffic between Chicago Heights and the Chicago Switching District.

Chicago Heights is in the Southeastern part of Cook County, 3.7 miles beyond the South boundary of the Switching District, on the Chicago & Eastern Illinois Railroad and within the District on the Baltimore & Ohio, Chicago

Terminal. (Tr. 497.) Thornton is the first station North of Chicago Heights with two industries: The Brownell Improvement Company, which is a large crushed stone and lime concern and the Central Amiesite Mfg. Co. These industries are listed in Galligans Tariff, I. C. C., 108, as being within the Chicago Switching District on the Baltimore & Ohio, Chicago Terminal. (Tr. 497.) The Baltimore & Ohio Chicago Terminal, the Chicago & Eastern Illinois Railway, the Chicago, Milwaukee, St. Paul & Pacific, Michigan Central, and the Elgin, Joliet & Eastern Railway, serve Chicago Heights. I offer exhibit No. 29, which is an excerpt from Chicago Terminal Transfer Tariff, I. C. C. 13, showing purposes of establishing the per car [fol. 640] charge between Chicago Heights and the Chicago Switching District, which was received in evidence, marked "Exhibit 29, Witness Pierce." (The testimony of witness regarding the history and development of Chicago Heights and its rate adjustment is substantially the same as that given by the Witness Webster, and for that reason is omitted from the abstract.) My exhibit No. 30 is a chronological history of the carload rates between Chicago Heights and the Chicago Switching District as compared with carload rates within the Chicago District. (Tr. 500.) Said Exhibit received in evidence, marked "Exhibit 30, Witness Pierce." (Tr. 500.) One of the primary purposes of the Lowrey Agreement was to establish a uniform rate within the Chicago District and when the Baltimore & Ohio Terminal Tariff I. C. C. 22 took effect September 1st, 1911, placed rates between Chicago Heights and the Chicago District on exactly the same basis as the rates within the district. (Tr. 502.) By basis, I mean the same level; the same rates. (Tr. 502.) 1900 to the present time, Chicago Heights has grown from approximately 5,000 to a city of approximately 30,000. The growth has been largely due to the existence of the Chicago Switching District. I offer Exhibit No. 31.

Mr. Davis: We object to Exhibits 31 and 32, purporting to be contracts, agreements and letters which I understand courts have declared are not binding and could not be binding on the railroads or the commission. (Tr. 503.)

Chairman Campbell: Even historically, I think it is a mistake to put this sort of stuff into the record, and we are excluding it. (Tr. 504-505.)

The Witness (continuing): I omit giving detailed rate history between Chicago Heights and Chicago Switching District because it would duplicate substantially the testimony given by the witness Webster. (Tr. 506.)

Exhibit 31 shows basic carload rates under suspension between Chicago Heights and the Chicago District. (Tr. [fol. 641] 506.) Offered and received in evidence, marked "Exhibit 31, Witness Pierce" and is forwarded herewith. It shows that by publishing the suspended rates, the carriers placed Chicago Heights on the Chicago Switching District basis. (Tr. 506-507.) Exhibit 32 shows car load traffic moving between Chicago Heights and the Chicago Switching District, via the Baltimore & Ohio Chicago Terminal and the Chicago & Eastern Illinois from January 1 to December 31, 1927 and was offered and received in evidence marked "Exhibit 32, Witness Pierce". (Tr. 508.) 9,467 car loads from Chicago Heights to the district and 5,784 car loads to Chicago Heights from points in the district or an average of 1,271 car loads per month moved between January 1 and December 31, 1927. (Tr. 509.) Approximately 30% of the car load traffic from Chicago Heights goes to points within the Chicago Switching District. Exhibit 33 shows distances from Chicago Heights to all stations on the Baltimore & Ohio Chicago terminal and the Chicago & Eastern Illinois, taking car load rate of 2½¢; offered and received in evidence, marked "Exhibit 33, Witness Pierce.". (Tr. 509.) There are 35 stations to which the 2½¢ car load rate applies from Chicago Heights and the average distances to those stations is 17.1 miles. Based upon 60,000 pounds minimum, the average revenue per car mile for the average distance is 88¢. (Tr. 510.) Exhibit 34 shows list of manufacturers and industries located at Chicago Heights that ship and receive car load freight, moving between Chicago Heights and the Chicago Switching District. Offered and received in evidence, marked, "Exhibit 34, Witness Pierce." (Tr. 510.) The exhibit does not include all industries located in Chicago Heights. It covers the industries shipping or receiving car load freight only, moving between Chicago Heights and the Chicago Switching District. (Tr. 511.) My survey in this respect was not complete. In addition to the carload movement mentioned, the concerns named in Ex- [fol. 642] hibit 34 received raw materials from points

within the Chicago Switching District which include asphalt, iron and steel bars, lumber and many other products. (Tr. 512.) Exhibit 35 shows list of industries in the Chicago Switching District that produce articles competitive with similar articles produced in Chicago Heights. Offered and received in evidence, marked "Exhibit 35, Witness Pierce." (Tr. 512.) This exhibit is submitted to show the commercial necessity for the same basis of rates between Chicago Heights and the Chicago Switching District as applies within the Switching District Territory. (Tr. 512.) The Midland Terra Cotta Co. produces terra cotta in the Chicago Switching district and it is also produced at Chicago Heights by the Northwestern Terra Cotta Co. Manganese Steel castings produced in Chicago Heights by the American Manganese Steel Co., competes with manganese Steel Products in the Chicago Switching District produced at Cragin and Kensington, Illinois. (Tr. 513.) Castings are priced F. O. B. Foundry and any increase in the rates from Chicago Heights to points within the district over rates previously prevailing will have to be absorbed by the American Manganese Steel Co. This Exhibit does not show all concerns located in the Chicago Switching District which produce articles competing with those produced by industries at Chicago Heights. The two examples mentioned are merely illustrative of the situation. (Tr. 513.) As a result of my survey it is clear that any increase in the rates from Chicago Heights to points within the switching district will have to be absorbed by the shippers or producers at Chicago Heights. (Tr. 514.) Any change in the rate adjustment which places Chicago Heights on a higher rate level than the Chicago District, will have an immediate injurious effect upon all industries at Chicago Heights. (Tr. 515.) I am familiar with the [fol. 643] transportation conditions prevailing between Chicago Heights and the Chicago Switching District. The carriers handling the traffic between Chicago Heights and points within the Chicago District are the Baltimore & Ohio, Chicago Terminal and the Chicago & Eastern Illinois Railway Companies. (Tr. 515.) Freight originating in the Chicago District destined to Chicago Heights via the Baltimore & Ohio, Chicago Terminal, is first assembled at Barr Yard, near Blue Island. A train leaves Barr Yard about 5:30 P. M., for Chicago Heights, which is operated

by a transfer crew under the supervision of the general yard master and the running time is 45 minutes. This train operation is substantially the same as train operation between two terminal yards in the Chicago Switching District and the movement is a switching movement under switching rates as published in the Tariffs. (Tr. 516.) On reaching Chicago Heights, delivery of the cars and the train are made to the connecting line and train returns to Barr Yards with freight from Chicago Heights, destined to the Chicago Switching District. (Tr. 516.) The North bound operation is the same as the South bound movement. The train leaves Chicago Heights about 9 P. M. When it reaches Barr Yards, the cars are then lined up for the different connections in the district and deliveries are made to the terminal yards in the district. (Tr. 517.) On the outbound movement, the Chicago Heights Terminal Transfer Railroad picks up the cars from the industries on its line and moves them to its classification yard and after classification, deliveries are made to the connecting lines in Chicago Heights between 4:00 to 7:00 o'clock P. M. each day. Freight from Chicago Heights to the Chicago District, moving via the Chicago and Eastern Illinois Railway is handled to Haney Yards located near Dolton, Illinois. (Tr. 517.) On the inbound movement, Chicago [fol. 644] Heights Terminal receives cars originating in the Chicago District from the Baltimore & Ohio Chicago Terminal and the Chicago & Eastern Illinois at Chicago Heights for delivery to points on rails of the Chicago Heights Terminal. (Tr. 517.) This freight is taken from these connecting lines in the morning to the terminal company's classification yards and then grouped for the engine working the territory according to the location of the industries in Chicago Heights to which the cars are to be delivered and when deliveries are made, the Chicago Heights territory engine performing this service also pulls loaded outbound cars as well as the empties. (Tr. 518.) The transportation rendered by these two carriers between industries located in Chicago Heights and industries located in the Chicago Switching District is substantially the same as the service performed by these carriers between industries located within the Chicago Switching District. (Tr. 519.)

We feel that the future welfare and prosperity of Chicago Heights as an industrial community depends entirely

upon the continuance of not to exceed the same rate relationship as now exists between Chicago Heights and the Chicago Switching District. (Tr. 519.) We further believe that the competition and transportation conditions between Chicago Heights and the Chicago Switching District justify the maintenance of this basis. There are 83 industries located on the Chicago Heights Terminal Transfer Railroad and all are members of the manufacturers association of Chicago Heights. All of these industries have a very substantial investment in their properties. (Tr. 520.) The Jones-Laughlin scale, in my opinion, is no more applicable from the Chicago Heights to the Chicago Switching District than it is between any points within the district. (Tr. 520.) It should not be applied to the movement of iron and steel within the confines of any switching [fol. 645] district or to any freight handled in a switch or transfer movement. The scale does not apply in the Pittsburg switching district, nor in any others. The extent of the switching district should be controlled by the transportation service rendered by the carriers; that is, whether the service is a switching service, a transfer service or a road haul service. As to the reasonableness per se of the rates between Chicago Heights and the switching district, we rely upon the evidence that has been offered or that will be offered by other witnesses, so far as Chicago Heights is concerned. (Tr. 522.)

Cross-examination by Mr. Davis, representing respondents:

While I was located at Terre Haute, Ind., before going to Chicago Heights, I did have occasion to confer with the carriers who procured a continuance of the rates on iron and steel articles from Terre Haute to Chicago, based upon the differential of 10½¢ over the rates in the district. We did not ask for any increase in the district or that their rates be related to the district other than for the maintenance of the old relationship. (Tr. 522-523.) I do not recall in asking for the maintenance of the 10½¢ differential Terre Haute under Chicago, that I cited Chicago Heights as being without the Chicago District. (Tr. 523.) The rates South bound from Chicago Heights are not as a general proposition lower than the Chicago District rates to those points. My investigation of rates from Chicago

Heights South bound, East bound and North bound show they are substantially the same as from Chicago as to class and commodity rates. (Tr. 523.) If there are rates lower from Chicago Heights than apply from Chicago, I am not [fol. 646] prepared at this time to say that we would not object to the increase in those rates. I would want an opportunity to discuss that matter with our executive traffic committee. I have discussed the question of what we now ask and at our meetings, the question of raising rates from Chicago Heights that might be lower than from Chicago was not discussed. (Tr. 524-525.) The industries listed in Exhibit No. 35 located in the Chicago District produce and sell articles similar to those industries located at Chicago Heights and under the proposed basis, the rates for single line, two line and three line hauls would be the same whether in the district or from Chicago Heights. Under the rates proposed, Chicago Heights would have the same rate basis or the same rates as the Chicago District and Exhibit No. 35 was not offered for the purpose of showing discrimination in the proposed basis but only to show that in the proposed rates the carriers considered that Chicago Heights and the Chicago Switching District should be on the same basis. (Tr. 525-526-527.) In my Exhibit 33, the mileages shown are via the Baltimore & Ohio Chicago terminal, down to the point where the mileages are shown via the Chicago & Eastern Illinois Railway. The distances shown, to Austin Park in the Exhibit is 31.7 miles; to Oak Park, 23.7 miles. If the Baltimore & Ohio Chicago Terminal cannot reach Oak Park by its rails without going through Austin Park, then the mileage shown to Austin Park may be in error. (Tr. 528.) I have never worked around the Barr Yard of the Baltimore & Ohio Terminal. (Tr. 529.)

Redirect examination:

The distinction, line haul movement and a strictly switching movement is this: A switching movement is a general [fol. 647] movement of cars under switching rates, being made by a switching or terminal crew under the jurisdiction of a yard master and we contend that the movement from Chicago Heights to points in the Switching District is a switching movement. (Tr. 530.) The movement from the next point South of Chicago Heights would be handled

in local freight trains. Between Chicago Heights and the Chicago District, it is handled in switching trains. In my Exhibit No. 33, the maximum haul for 35 stations is 33.8 miles all located on the Baltimore & Ohio Chicago terminal and the Chicago and Eastern Illinois and the switching charges apply to stations on all other lines besides those named, for the connecting line and would be ½¢ higher. The maximum haul might be more than 33.8 miles but in Witness Vivian's Exhibit No. 11, I believe the average shown for those stations was about 22 miles. (Tr. 531.)

The Chicago, Milwaukee & St. Paul reaches Chicago Heights but it does not handle local freight between Chicago Heights and the Chicago Switching District. It operates over the Baltimore & Ohio Chicago Terminal. It does not handle any freight from Chicago Heights. It is handled over the Baltimore & Ohio Chicago Terminal and under its contract with that road, it cannot handle freight from Chicago Heights into the switching district. (Tr. 532.) On movements of traffic between points in the Chicago Switching District, the maximum distance in some instances would be just as great or greater than the distance from Chicago Heights. (Tr. 533.) The Baltimore & Ohio Chicago Terminal has been considered as the rate making line between Chicago Heights and points in the Chicago District for many years, and I do not understand [fol. 648] that it publishes rates either locally or jointly with connecting lines serving the Chicago District that are different from Chicago Heights than from points within the Chicago Switching District. (Tr. 533-534.) On a movement originating on the Chicago Heights Terminal routed to a point on the Chicago & Eastern Illinois under the rates proposed, it would be a two line movement. (Tr. 534.) My statement that the Baltimore & Ohio Chicago Terminal is the rate making line between Chicago Heights and the Chicago District, is based on the information gathered since I have been in Chicago Heights and in going over the rate history for a great many years. (Tr. 534.) The rates on the Baltimore & Ohio Chicago Terminal and on the Chicago & Eastern Illinois between those points are the same now. During the period covered by Mr. Webster's testimony, there were times when rates between Chicago and Chicago Heights on the Chicago & Eastern Illinois were lower than they were on the Baltimore & Ohio Chi-

cago Terminal and in some instances they were higher. The Baltimore & Ohio Chicago Terminal has carried its rates for a great many years on exactly the same basis as the rates in the Chicago Switching District. I do not have in mind any instances where the rate was set or made by the Baltimore & Ohio Chicago Terminal and had to be met by the Chicago & Eastern Illinois. (Tr. 535.) My distinction between a road haul movement and a switching movement is that a switching movement is one of cars that move under switching rates, handled by a switching or terminal crew under the jurisdiction of the yard master. That is not true of a line haul movement. (Tr. 536.) If switching rates were extended to the point next South of Chicago Heights, it would not make the same as switching move unless actually handled as such. Whether the service is switching service of a transfer service, or a line haul serv- [fol. 649] ice, the limit of the switching district should begin and end where the switching movement starts. (Tr. 537.) I had no particular station in mind as the one directly South of Chicago Heights, but as I understand the switching service ends at Chicago Heights. (Tr. 538.) If the switching service ends at Chicago Heights, it would not make any difference what the station was. Beyond the Chicago Heights, it would be a road haul movement because there is no switching service South of Chicago Heights. (Tr. 539.)

F. H. Rutherford, called in behalf of respondent carriers, being sworn, testified as follows:

Direct examination by Richmond, representing respondents:

I am Superintendent of Chicago Terminals for the Chicago & Eastern Illinois Railroad and have jurisdiction over that portion of the railroad from Chicago to Chicago Heights and to about ten miles South, beyond Chicago Heights; have had charge of this terminal work for about 20 years and know how freight traffic is transported between Chicago Heights and points within the Chicago Switching District on the Chicago & Eastern Illinois. There is no difference now in the way traffic is handled to and from Chicago Heights and the Chicago Switching District or moving between points within the Chicago District. (Tr.

540-541.) Our assembling yard for receipt of cars from connecting lines is at Dolton, about 18 miles South, where we get cars from the various belt lines. We do not reach much of an industrial district inside of Chicago. At Dolton, we separate the cars and those for our switching district in the city are handled by a transfer switching crew from Dolton to 33rd St., a distance of 15 miles; cars des- [fol. 650] tined Chicago Heights are handled by a switching transfer crew between Dolton and Chicago Heights. A number of years ago this was not true as we then moved cars between Dolton and Chicago Heights in road trains. This change was partly brought about by the fact that the Chicago & Eastern Illinois Railroad bought the Chicago Terminal Transfer Railroad. (Tr. 541.) Steger is the first station South of Chicago Heights and about two miles away. (Tr. 542.) We handle traffic between Steger and the Chicago Switching district in the same manner we handle that moving between Chicago Heights and the Chicago Switching District. At the present time the service between the Chicago Heights and the Chicago Switching District is a switching service. It is performed by switching crews; formerly as I explained, it was a road haul service. The difference in the character of service is quite material. (Tr. 542.) This change as a regular thing became effective August 1st, 1927 but gradually the practice had grown, being brought about by operating conditions and the amount of business, etc. Tr. 542.)

My statement, Mr. Commissioner, was that we handled traffic at Steger in the same manner that we do at Chicago Heights, but I did not say because of that, Steger is within the Chicago Switching District. My statement merely covered the conditions of operation.

Commissioner Campbell:

Q. Well then if the work is performed in the same manner and the conditions are the same, of course if Chicago Heights is put within the Chicago Switching District, Steger must be, must it not?

A. I would not want to say as to that, Mr. Commissioner. (Tr. 543.)

[fol. 651] Cross-examination by Mr. Walter, representing shippers:

From a freight standpoint, Chicago Heights includes the yard limits there which takes in Steger. The Steger Piano Company is at present the only industry operating at Steger and we have done switching at Steger for a good many years with the engines from Chicago Heights. There is another town a mile and one half South of that: Crete, where conditions are entirely different. Our engines do not go there and it is a road haul proposition. There are no large industries at Crete. If a large industry was located there, I would not care to express an opinion as to the propriety of extending the switching service to that point because it is a very wide question. A road haul movement for a short point involves a lack of tonnage from the time the car is set out to the destination of the train. A road haul crew moves from one terminal to another. A switching crew always goes back to its own terminal. It never gets very far away. (Tr. 546.) The next large industrial town South of Chicago Heights on our railroad is Hoopeston, about 75 miles. I have jurisdiction over road haul movement to a point about 10 miles South of Chicago. Primarily, I am in charge of the Chicago District and I do not pay much attention to the road trains that come in and go out over my district. (Tr. 547-548.) The fact that the name Steger is applied to the Piano works does not, so far as the service is concerned, change the situation at all. Steger is served just like others at the terminus at Chicago Heights. I cannot say that would be true if a large piano factory were started at Crete. My distinction between switching and road haul service is that the switching service the crew starts out and performs its work and comes back to the starting point, while in road haul services, the [fol. 652] crew goes to the nearest division point, stops and perhaps comes back the next day.

By Mr. Orcutt:

Q. Therefore, is it true then that your idea of switching services as contrasted with road haul services is switching services can only extend so far, that the crew may start out and go to their limit and still have time to get back to the starting point within their 8 hour trick.

A. Well, that is about as good a definition as I know of. (Tr. 549.)

There are two small industries at Bernice, and the distance from there to a point in Chicago Switching District.

is no greater than from Chicago Heights and if you would ask me that question most anywhere else, Mr. Commissioner, I would say that I did not know of any reason why Bernice should not have the same rates as Chicago Heights; the conditions are the same. I can only tell about conditions, Mr. Commissioner. (Tr. 549.)

But the conditions again are entirely different. The industries at Bernice may be served by road trains; a road train starting for Chicago to a terminus 125 miles away, setting off 10 cars at Bernice, necessarily would be short 10 cars in its tonnage for the rest of its journey, entailing a material loss in train haul; and if Chicago Heights gets Chicago Switching District rates and an industry at Bernice claims discrimination and demands the same treatment, the question goes right back as to whether the service can be most economically performed by switching service or road haul service, bearing in mind that switching service is quite expensive but goes only as far as the service. Whereas, the connection with road haul service, a car may be hauled 10 miles and the train proceed, with train crew getting its pay, but still it is short as many cars as it sets off at the short terminus. (Tr. 550.) Referring to the matter of Steger, which is not included in the extension to Chicago [fol. 653] Heights, I do not know what answer we can make as to Steger, but the conditions at Steger being what they are and the same at Chicago Heights, I do not know what the difference might be. (Tr. 551.) My understanding is that Steger is not included in the Chicago Heights switching district. (Tr. 552.) Road haul crews handle switching [fol. 654] at the smaller stations under switching rates that may apply as between two industries at that station or something of that sort. Such switching is usually handled with the local road haul crew; that is quite a different service from the through train service. It is perhaps not perfectly clear as to how we handle this business. We have two classes of road haul crews. One is the local crew with districts usually short, running from 40 to 75 miles, which is paid so much per day, so much per hour; through road haul train crews are paid by the mile and their business is to haul trains from one terminal to the other, usually not less than 100 miles apart. These crews do but a limited amount of switching. Requirements of the labor unions prevent these crews from doing local switching. The local crews, which are in fact switching crews with terminals at

two different places, do that sort of switching. (Tr. 555.) The actual facts in any case have got to govern. There is character of service and volume of business as well as other facts to be considered in determining the extent of any switching district. It is not the competitive conditions at particular points rather than the class of train crew handling the particular service that determines the extent of any switching district. (Tr. 555.) We try to keep our operating conditions down to a sensible basis and do the work as it ought to be done. (Tr. 555-556.) As to the work that might be done at some isolated station in the country in the way of switching, it is not comparable with conditions that apply at Chicago or any other large city. The mere fact that service is rendered by a switching crew, even of itself does not determine the extent of any switching district. All conditions that have to do with the switching service should be considered. (Tr. 556.) The Hamilton Piano Company and the Baldwin Piano Company are lo- [fol. 655] cated at Chicago Heights, but it is all the same outfit, though they may be separately listed. (Tr. 557.) I do not know whether both plants have the same rates to Chicago, as I know nothing about how the rates are made. That is not my business. (Tr. 557.)

We apply the rule of reason as to the distance we go in performing switching service. We always go as far as we think we should. Naturally I think Chicago Heights is as far as we should go in this matter, but I do think we should go there. The large number of industries and large amount of local business makes it undesirable to handle it back and forth in road trains, because the loss in road train haul would be too great beyond that point. No hard and fast rule can be laid down. Every case must be studied by itself. (Tr. 558.) Under operating conditions at Chicago Heights I would not want to go any further with a switching engine on the Chicago & Eastern Illinois, because it would not have any cars to handle that would make it worth while. If you have one or two cars to set out that train haul loss may be taken from a road train, but with 8, 10 or 15 cars we cannot afford to take that loss on your road train haul, if you set them out with a road train crew. Therefore you run a switch engine. Distance is not the

controlling factor; all conditions must be taken into consideration. (Tr. 559.)

R. A. BARLOW, recalled as a witness by Mr. Cardy.

Direct examination:

I am train master of the Baltimore & Ohio Chicago Terminal Railroad Company and am familiar with operating conditions on that road. It is a switching line in the Chicago terminal, and Chicago Heights is its southern termi- [fol. 656] nus. The service performed by the Baltimore & Ohio Terminal handling a car from the north side to Chicago Heights is the same as handling a car to any other point in the Chicago switching district. (Tr. 560-561.) Comparing a movement of a car from Barr yard to Chicago Heights with one moving to East Chicago: East Chicago cars move from a point in Chicago through Barr yard to East Chicago. A car originating in Chicago for Chicago Heights goes through Barr yard, where it is classified into a Chicago Heights run. We are strictly a switching road and have no road haul crews. (Tr. 561.) We do not switch for any of the industries at Chicago Heights; that service is by the Chicago Heights Terminal Transfer Railroad. (Tr. 562.)

Cross-examination.

By Mr. McElroy:

There is a large stone quarry located just north of Chicago Heights served by our line. At the present time we handle from 25 to 35 cars daily out of that quarry. (Tr. 562.)

E. L. MAYNARD, called by Mr. Cardy, was sworn and testified as follows:

Direct examination.

By Mr. Cardy:

I am traffic manager of the Brownell Improvement Company located at Thornton, Illinois. I have prepared some statements showing movements of stone between points in

the Chicago switching district. I represent in this proceeding the Dolese & Shepard Company, on the Chicago & Illinois Western Railroad; and Federal Stone Company, on the Baltimore & Ohio Chicago Terminal and the Indiana Harbor Belt, both industries being at McCook, Illinois; A. C. O'Laughlin Company at Bellwood, Illinois, on the Indiana Harbor Belt, Chicago & Great Western, and Chicago, [fol. 657] Aurora & Elgin; Peoples Crushed Stone Company, McCook, Illinois, on the Indiana Harbor Belt; Superior Stone Company, McCook, Illinois, on the Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt; Brownell Improvement Company, located at Thornton, Illinois, on the Baltimore & Ohio Chicago Terminal, Chicago & Eastern Illinois, Chicago, Milwaukee, St. Paul & Pacific, and Illinois Central. Those stone companies are all located in the Chicago district. My statements show movements of crushed stone between points in the Chicago switching district during the years 1925 and 1926. (Tr. 564.) Crushed stone rates are included in this hearing. (Tr. 565.) My first exhibit is No. 36, covering crushed stone movement during the year 1925 from the six companies named to points in the Chicago switching district. The first page is entitled "Pressed Stone Shipped During 1925 from Thornton, McCook and Belleville." (Said exhibit received and marked "Ex. No. 36, Witness Maynard,") (Tr. 566.) Fifty-three and six-tenths per cent of our entire shipments for the year moved to points within the Chicago district. Local shipments in the Chicago district amounted to 37.31 per cent for a one-line movement; two-line, 60.9 per cent, and three-line, 1.79 per cent. (Tr. 566-567.) Page 2 of the exhibit shows number of cars of crushed stone shipped from those 3 producing points to local destinations, with recapitulation for joint hauls, and joint hauls are named on page 3. (Tr. 567.) Page 4 shows earnings on 25 shipments to local destinations in the district. The average distance for local and joint hauls was 19.3 miles. Average weighted local haul was 14.4 miles, and average haul was 22.2 miles; and average weighted haul for local and joint was 19.3 miles. (Tr. 567.) To compute average weighted haul of shipments of each company I figured the route of [fol. 658] movement; did not use short line mileage, which would have made a shorter average haul. The next columns show earnings per ton mile, per car mile under present rates, with total revenue. (Tr. 568.) Page 5 covers joint

hauls. Page 6 shows the separation of local hauls on intrastate traffic, and page 7 shows intrastate joint hauls. Page 8 shows interstate local and joint hauls. (Tr. 568.) The recapitulation on page 6 shows 20,616 cars moving intrastate, and page 8 shows 3,239 cars interstate, both local and joint hauls. (Tr. 569.) Ex. 37 is similar to No. 36, but covers 1926 shipments of the same companies (Ex. 37 introduced in evidence, page 569); with the addition that pages 9 to 12 show earnings on the proposed rates that are under suspension.

The intrastate shipments for 1926 local and joint hauls were 24,257 cars. (Tr. 569.) Interstate shipments were 2,959 cars. The service in handling intrastate and interstate shipments is practically the same and the rates the same except on the Indiana Harbor Belt, interstate rate on crushed stone is 10¢ higher. (Tr. 570.) Destinations on interstate traffic are entirely different from state destinations in the Chicago Switching District. The average haul shown in the exhibit is the actual weighed average (Tr. 571.)

W. J. Womer, called as a witness, was duly sworn and testified as follows:

Direct examination.

By Mr. Cardy:

Am traffic manager of Consumers Company, an Illinois Corporation, producing, selling and distributing crushed stone, sand, and gravel, with stone quarries at McCook, and Lemont and sand and gravel pits at Algonquin, all in Illinois. (Tr. 572.) McCook is located on the Atchison, Topeka & Santa Fe, Baltimore & Ohio, Chicago Terminal, Chicago & Illinois Western and Indiana Harbor Belt; Lemont is on the Chicago & Alton and is also served by the Chicago and Joliet Electric Line; another stone quarry operated at Ives, Wisconsin, is located on the Chicago and [fol. 659] Northwestern and is also served by the Milwaukee Electric Light & Power Co., an interurban railroad. Algonquin is on the Chicago & Northwestern Railway, and our sand and gravel pits are operated at South Beloit, Illinois, on the Chicago & Northwestern, at Beloit, Wisconsin, on Chicago, Milwaukee & St. Paul, at Ginger Hill, Indiana, on

the New York Central, and Dune Park, Indiana, on the Indiana Harbor Belt. Have been engaged continuously since 1904 in the handling of sand, gravel and crushed stone in the Chicago Switching District and from points outside to points therein. (Tr. 573.) The map, Exhibit No. 38, prepared by me shows relative location of sand, gravel and crushed stone plants in the Chicago Switching District, which was offered and received in evidence, marked, "Exhibit 38, Witness, Womer." (Tr. 573.) This map is drawn to scale and shows principal sand and gravel pits, stone quarries in Southern Wisconsin, Northern Illinois and Northern Indiana; sand pits shown by circles and stone quarries by squares. (Tr. 573-574.) The shaded section to the left of the word "Chicago," is the Chicago Switching District. (Tr. 574.) The squares enclosing x's show stations at which quarries within the Chicago district or adjacent thereto, served by rail transportation, are located. There are stone quarries located closer to the heart of town but not served by railroad, the output being handled by motor truck. In addition to the companies represented by Mr. Maynard, I speak for the A. C. McLaughlin Company, the Federal Stone Company, Superior Stone Company, Peoples Stone Company, Dolese & Shepard Company, Brownell Improvement Company and Consumers Company, and which includes all crushed stone plants in the Chicago district served by rail except the small operation of the Riverside Lime & Stone Company. Generally speaking, all crushed stone plants within the district are on the outer rim, and almost entirely on switching lines. (Tr. 574.) [fol. 660] They are all served by switching lines, but in addition some are served by trunk lines; but quarries proper are on switching lines, the great bulk of stone traffic moving via switching lines. (Tr. 575.)

Ex. 39 prepared by me deals with the rate situation on sand and gravel. (Tr. 575.) (Said document was received in evidence and marked "Ex. No. 39, Witness Womer.") (Tr. 575.) Page 1 of the exhibit shows local rates, crushed stone from Thornton and McCook, Illinois, via Baltimore & Ohio Chicago Terminal Railroad to Illinois destination. The first rate, 16 cents per ton, effective January 1, 1908, with subsequent changes shown from left to right, and the 50 cents at the extreme right hand is the present rate, with the 60 cent rate being the one under suspension. The first rate history shows only infrastate rates

to points in Illinois in the district. Below are shown rates to Indiana points within the Chicago switching district. The separation made there was because from time to time interstate rates differ from intrastate rates; exceptions are noted by appropriate reference marks explained at the bottom of the sheet; tariff authority for each change being shown immediately under measure of rate.

Page 2 shows local rates, crushed stone, via Chicago & Eastern Illinois from Thornton, Illinois, to Chicago, and is self-explanatory.

Sheet 3 shows local rates, crushed stone, via Indiana Harbor Belt from McCook and Bellwood districts to Illinois intrastate destinations in the Chicago switching district. (Tr. 576.) Below the intrastate rates is the South Chicago rate as well as interstate rates to points in Indiana within the Chicago district. (Tr. 576.)

Sheet 4 shows history of freight rates on crushed stone from various quarries within the district to various industrial deliveries via connecting lines therein. (Tr. 577.) Rate basis 1 in the first line is explained under caption [fol. 661] "Explanation," as meaning interchange direct covering two-line service between industries in the district and is the so-called "All-Commodity" basis applicable to traffic within the districts. Rate basis 2 explains use of one intermediate carrier, or a three-line haul. Rate basis 3 is similarly explained. (Tr. 577.) The general interstate basis for stone movements between points in the switching district is 50 cents for one- and two-line hauls; intrastate, 40 cents per ton, single-line; 50 cents, two-line, and 60 cents, for three-line. (Tr. 577.) The rates proposed are 60 cents one-line, 70 cents for two-line, and 80 cents for three-line, which is set forth on the following page of the exhibit.

(Document marked "Ex. No. 40, Witness Womer," was offered and received in evidence.)

Said exhibit shows total movement of crushed stone from the 7 stone quarries within the Chicago switching district for the year 1925, and was compiled in collaboration with Mr. Maynard, who showed the figures in his Ex. No. 36 for 6 companies. (Tr. 578.) The exhibit covers all carload shipments of stone from quarries within the Chicago switching district to private sidetrack deliveries therein, showing 11,774 in one-line movements both state and inter-

state in the Chicago switching district, representing 35.1 per cent of the total movement of 33,623 cars, with an average haul of 17.4 miles. Weighted average and the freight revenue per car and per car-mile are shown separately for local hauls, joint hauls, and assembled into a total or average for the entire district, state and interstate movements being combined. (Tr. 579.) Separating interstate and intrastate shipments, 22.66 per cent were interstate. The division as to local and joint hauls interstate is approximately the same as on the total, the exact percentage of local being 35.38. (Tr. 580.) Illinois intrastate shipments [fol. 662] represented 77.34 per cent of the total, local hauls being 34.91 per cent. The average haul on Illinois intrastate traffic is 18.9 miles, combining local and joint hauls; the average in interstate shipments is 33.8 miles. Average local haul intrastate was 13.9 miles, and interstate 29.1 miles, shown by the exhibit. (Tr. 580.) This exhibit shows movement only of stone originating within and destined to points within the Chicago switching district in 1925, and the detailed figures were procured from each producing company.

In examining Consumers Company shipments I found that the short hauls approximated 65 per cent of the distance via route of movement for the year 1925. After examination of shipments embraced in carriers' cost study, and after being shown Oliver's Ex. 13, I believe there is a greater range between the short route and the distance via route of movement, taking the district as a whole. (Tr. 581.) I refer to the shortest routes via which the traffic could actually move. My Ex. 41 covers the same matters as Ex. No. 40, except the former is for the year 1926. (Said document offered and received in evidence and marked "Ex. No. 41, Witness Womer.") The percentages, however, differ from those in 1925. (Tr. 582.) For 1926 local hauls were 38.42 per cent. Intrastate shipments for that year represented 46.97 per cent of total movement. Local hauls interstate were 41.15 per cent of total interstate movement. Illinois intrastate shipments represented 83.03 per cent of the total movement within the district. Local hauls Illinois intrastate were 37.86 per cent of total intrastate movement. (Tr. 583.) Exhibit 41 in addition shows per car revenue and per car mile revenue under proposed rates, suspended in I. & S. Docket 2,900 and Illinois

Commission Docket 17,250. (Tr. 583.) Sand and gravel pits adjacent to Chicago were first established in the Fox River Valley, the territory roughly between Crystal Lake [fol. 663] and Elgin, Illinois. With increased consumption, additional plants were established at Joliet and then others in the Rock River Valley shown at extreme left of map, Exhibit 38, roughly described as between Janesville & Rockford. (Tr. 583.) Various rates were published by the carriers serving these origin points, resulting in disagreements aired in complaints adjudicated by the Interstate Commerce Commission and the Illinois Commerce Commission as to these identical questions. (Tr. 584.) The Commission established sand and gravel rates within the Chicago District in Docket No. 17,817 and crushed stone rates between points in the district in I. & S. 2,649. The commission approved an adjustment of sand and gravel rates on the basis worked out between shippers and carriers, (Tr. 584) which provided a rate of 65¢ per ton from points within a radius of 50 miles from Chicago to points within the district for a single line via the short line, designated zone 1; 5¢ per ton higher from zone 2, embracing points 51 to 100 miles from Chicago and 5¢ per ton higher from zone 3, covering 100 to 150 miles and for off line deliveries an arbitrary of 20¢ per ton was approved in addition to single line rates. (Tr. 585.) Generally speaking, the basis for stone movements within the Chicago Switching District, intrastate 40¢ per tone for 1 line, 50¢ for 2 lines and 60¢ for 3 lines; and interstate, 50¢ per ton for 1 and 2 line hauls and 60¢ for 3 lines, and that relative adjustment was passed upon by the Commission in the proceeding I mentioned.

Gravel competes with crushed stone in the Chicago district but sand does not. Between gravel and crushed stone, the competition is keen because both are used in common for many purposes. Gravel can be used as well as crushed stone for general concrete work, for paving work and for [fol. 664] building construction. (Tr. 586.) Sand and gravel do not always take the same rates. The former being lower than the latter. They are generally spoken of together and frequently sand, gravel and stone are spoken of together and we have sand rates on a different basis than gravel rates. (Tr. 587.) Indiana pits were developed subsequent to Illinois and Wisconsin pits. A heavy volume of gravel moves to the Chicago market annually but I can-

not give the aggregate figure. The decision in Docket No. 17,817 gives figures as to volume of movement.

There are sand and gravel pits located on practically every trunk line entering the Chicago District and the movement is usually via a one line to which the single line rate applies. The movement of stone from a point within the Chicago district to the same destination generally takes a two line rate; (Tr. 588) because practically all stone producing plants in the Chicago district are located on switching lines, while sand and gravel plants are located on trunk lines; and stone generally has to compete by a two line movement with a 1 line movement on gravel. (Tr. 588-589.) If the increase proposed becomes effective on stone, it will either transfer stone tonnage to gravel pits or will require stone quarries to deliver products within the Chicago switching district by motor trucks and by water. Stone production is more expensive than gravel but the delivered price must include transportation charges. We have found in many instances that we can make cheaper trucking deliveries of our products within the district, using water transportation, than by all rail transportation. Any increase in switching rates naturally increases the delivered price of commodities produced and consumed in the district. (Tr. 589.) We use water transportation. (Tr. 590.) From examination of our records, it costs from 2 to 3½ times as much to produce a ton of stone as it does [fol. 665] to produce a ton of gravel. Worked out in percentages, lowest gravel cost compared with lowest stone cost, the ratio is 38.35 per cent; comparing highest cost gravel with highest stone cost, the ratio is 29.24 per cent; comparing lowest cost gravel with highest cost stone, the ratio is 47.4 per cent. Comparing highest cost gravel with lowest cost stone, the ratio is 59.14 per cent. In cents, this means a higher cost of stone averaging about 15c to 20c per ton. (Tr. 590.) In addition to gravel competition from zones 1, 2 and 3, crushed stone competes in the district with slag, a by-product or refuse of steel plants, crushed, sized and prepared. Increase in slag rates are proposed. Off grade and off size stone is frequently used for filling purposes and comes in competition with all kinds of plant rubbish and refuse material. (Tr. 591.)

There is a proposal to increase road haul rates from zones 1, 2 and 3 on sand and gravel, as well as on stone.

(Tr. 591.) We meet water competition in the Chicago switching district. Sand suckers operate out of the Harbor of Chicago. They suck sand and gravel from the lake and haul it to Chicago, their boats having machinery permitting unloading to the docks from which it is trucked. In many instances it is loaded into cars and shipped from one corner of the district to some other location in the district. Several of these operations are at South Chicago. (Tr. 592.) Approximately 500,000 tons of stone moves annually from Lemont, Illinois, via water, to the Chicago switching district. We meet competition of stone producing plants located in the Chicago switching district, not located on railroads and two competitors have very large quarries of that character. There has been a great num-
[fol. 666] ber in past years. Crushed stone, such as produced in the Chicago switching district is worth approximately 80¢ per ton, but is sold by cubic yard; 1 cubic yard weighing 2,500 pounds. (Tr. 592.) In 1925, average loading of crushed stone per car was 53.74 tons and in the year 1926, 53.47 tons. Document offered was received in evidence marked "Exhibit No. 42, Witness Womer." (Tr. 593.)

Exhibit 42 tabulates rates on crushed stone between points within the Chicago district, originating at quarries on the Baltimore & Ohio Chicago Terminal and Chicago & Illinois Western and Indiana Harbor Belt, destined to private side track deliveries on connecting lines showing present rates per net ton and those proposed. (Tr. 594.) The first column shows rate of 50¢ per ton on Baltimore & Ohio Chicago Terminal applicable to 27 delivering lines. The 60¢ rate applies to 8 lines taking the column on proposed rates at 70¢ applying to 27 lines and the 80¢ to 8 lines. The last column, Indiana Harbor Belt, the 50¢ rate applies to 31 lines and the 60¢ to 4 lines. The proposed rates are in the same ratio. (Tr. 594.)

There are a large number of industries on the Chicago & Northwestern and the Chicago, Milwaukee and St. Paul railroads and rates shown in present and proposed columns do not apply to all deliveries on those railroads. (Tr. 594.) There are points on those lines taking rates uniformly 10¢ per ton higher than the general basis within the district. On the Exhibit, the 50¢ present rate is shown applicable to Chicago and Northwestern stations except Irondale, but

60¢ per ton applies to a number of stations. The 70¢ proposed rate is shown but to the outlying stations in many instances it will be 80¢. No crushed stone plants are on the Chicago & Northwestern Railway in the Chicago switching district. The lowest possible rate under the increase proposed applying to crushed stone from plants within the [fol. 667] Chicago switching district to an industry on the Chicago & Northwestern would be 70¢ per ton; (Tr. 595) and to some outlying industries on that line would be 80¢ per ton, while generally speaking, the present rate is 50¢, but to the outlying districts, under the proposed 70¢ stone rate, the rate on gravel from plants on the Chicago & Northwestern within 50 miles of Chicago would be 65¢ per ton and that rate would apply from stone quarries located on the Chicago & Northwestern within that distance. Based on my experience, if this proposed increase applied to destinations on the Chicago & Northwestern, there would be no stone movements to those destinations without a corresponding increase in gravel rates from points on that line and other trunk lines to those destinations. We would bring stone on road haul movement from Ives, on the 70¢ rate to give that plant an added load factor, in preference to paying 70¢ to switch stone on a two line haul between points in the Chicago switching district. Ives is in Wisconsin Zone 2, approximately 65 miles from Chicago, just North of Racine. (Tr. 596.) The 80¢ per ton value of stone applies at the quarry. Sand and Gravel are worth less and sell for less. These prices are F. O. B. shipping point. We take this figure of 80¢ and add the freight and sell for whatever that may be; that is what we have been doing in the past. (Tr. 597.) Under the tariff, the 50¢ rate applies to the Chicago & Northwestern and the Milwaukee and the present rate is not 60¢ under the tariff. Under the proposed tariff it is carried as a two line haul. It is not a 3 line haul because the Illinois Central operates the Chicago & Illinois Western. (Tr. 598.) Galligan's Tariff, I. C. C. 89, carries rate basis one from Chicago & Illinois Western quarries for deliveries on all but 3 railroads, through which joint rates are published in the tariff, appearing on page 10. (Tr. 598.) My exhibit 43 sets forth present and proposed, local and proportional rates on [fol. 668] crushed stone for McCook, Illinois, via Indiana Harbor Belt, to local stations thereon in Illinois. Offered

and received in evidence, "Exhibit 43, Witness Womer." (Tr. 598.)

The Exhibit shows distances, rates per ton, present and proposed, revenue per car, present and proposed, revenue per car mile, present and proposd, based on average weight of 106,100 pounds. This merely for comparative purposes to test out the reasonableness of the proposed rates. (Tr. 599.) Exhibit 44 is a similar statement applicable to interstate destinations, making the same relative showing as Exhibit 43. The document was offered and received in evidence, marked "Exhibit 44, Witness Womer." (Tr. 599.) Exhibit 45 shows rate adjustment on sand, gravel and crushed stone from origin points shown on Exhibit 38, to Chicago, which was offered and received in evidence marked "Exhibit 45, Witness Womer." (Tr. 599-600.) Am familiar with the movement of crushed stone from McCook to points within the Chicago district and with the sand and gravel movement, outside district points at the 65¢ rate. (Tr. 600.) Comparing operating conditions on movements of sand and gravel from zone 1 to the Chicago switching district with crushed stone movements from McCook to the same destinations, when it comes to the topography of the country, curves, grades, etc., the conditions within the Chicago district are generally more favorable than the conditions connected with the road haul movements. Shipments from zones 1, 2 and 3 entail considerable haul before they get to the Chicago switching district. (Tr. 600.)

At Algonquin, Illinois, we have a sand and gravel plant on the Chicago & North Western Railway 48 miles from Chicago, and from there a shipment would move to Chicago via either the Wisconsin or the Galena division. At the [fol. 669] plant the empty cars would be spotted for loading, while at stone quarries cars are merely shoved in and the industry performs its own spotting. In fact, it does all of its own intraplant switching without any allowance therefor. (Tr. 601.)

Comparing operating conditions on movements of sand and gravel from Zones 1, 2 and 3 with the movement of stone within the district, and using Algonquin, Illinois, as illustrative, sand and gravel shipments would be handled from the pit to Crystal Lake, there classified and put into a road-haul train and hauled to break-up yard on the outer

rim of the Chicago district, which on the Galena division would be Proviso, an interchange point with the Indiana Harbor Belt through which the latter could interchange traffic with the Chicago & North Western on shipments of stone at quarries within the Chicago district. (Tr. 610-611.) From Proviso yard to destination point of shipment on the Chicago & North Western Railway the transportation conditions would be identical with those having points of origin and destination within the Chicago switching district, but there would be approximately 25 miles greater haul on sand and gravel from Algonquin to Chicago than on stone moving within the Chicago switching district. (Tr. 611.) There are other differences besides distance; the grades, curves and general conditions. Conditions within the Chicago switching district are more favorable than on road-haul between origin points referred to and the Chicago switching district. There are many more operations at a stone plant than at a gravel plant. (Tr. 612.) At a quarry there is stripping for removal of over-burden to make the stone accessible; the drilling of holes for explosives to break up or loosen stone; picking up stone by steam shovels and loading to quarry cars, and transportation therein to the crushing plant. Then follow various crushing operations, the initial and the reduction crush-[fol. 670] ings and then washing and screening, making the commodity then ready for loading in railroad cars. (Tr. 612.) Removal of over-burden is required at sand and gravel operation. Then the movement to the washing plant for washing and screening and thence loading cars. The quarry operation is much more expensive and more dangerous in many respects. Quarry investment is much greater. More machinery is required and property values are higher by reason of proximity to large metropolitan areas than in the case of gravel pits. (Tr. 613.)

The purpose of Ex. 45 is to set forth rate adjustments on sand and gravel and crushed stone in the territory shown in Ex. 38, and to set up a yardstick to test the reasonableness both of present and proposed rates on stone within the Chicago switching district. (Tr. 613.) The revenue per car on Ex. 45 is figured on 50 tons and is approximately the average per car weight of sand and gravel. Approximately 6½ million to 7 million tons of sand and gravel move per year into the Chicago market form origin points shown in Ex. 45. (Tr. 614.)

Ex. 46 shows freight rates on miscellaneous commodities between Chicago and Joliet, excepting items marked with an asterisk, which apply in one direction only. The balance of the exhibit is self-explanatory. The transportation conditions from Joliet to Chicago as compared with the Chicago switching district are substantially the same as stated regarding conditions between Algonquin and Chicago. The purpose of this exhibit is to compare revenue on traffic from Joliet with the rates proposed in this proceeding and to test out the reasonableness of the rate level. (Tr. 614.)

Ex. 47 shows miscellaneous commodity rates between Fox River Valley points, Rockford, Freeport and Sterling on the one hand, and Chicago on the other, with distance, [fol. 671] weight, earnings per car, and per car mile. (Said documents referred to were offered and received in evidence and marked "Exs. Nos. 46 and 47, Witness Womer.") (Tr. 615.) In this exhibit we used minimum weight because with one or two exceptions, pig iron and scrap, for instance, the actual weight would not exceed the minimum. (Tr. 615.) On traffic from Elgin and from Joliet to the Chicago switching district in each instance the rates provided for a movement through the entire Chicago district. They do not merely cover movements to the switching boundary. They cover the through movement. (Tr. 616.) With one or two exceptions these rates apply to any delivery in the Chicago district that is available under provisions of Agent Galligan's Tariff 20 Series. (Tr. 616.)

My exhibit 48 is a tabulation of miscellaneous commodity rates between Chicago and Waukegan, Kenosha, Racine and Milwaukee, Wisconsin, and is submitted for the same purposes as Exs. 46 and 47. (Said exhibit was offered and received in evidence and marked "Ex. No. 48, Witness Womer.") There is a movement on these rates. (Tr. 616.)

Generally speaking, rates on sand, gravel and stone are on the same level. The Elgin, Joliet & Eastern Railway published rates from and to points on its line on approximately the same level as crushed stone rates in the Chicago District, but for greater distances. The Elgin, Joliet & Eastern Tariff I. C. C. 2107, shows a rate of 50 cents per ton on sand and gravel from Spalding, Illinois, to local stations on its line for distances as far as 81 miles, and in the opposite direction the same level is carried for a maximum distance of 35 miles.

From Plainfield, Illinois, the same carrier names a 50-cent rate northbound for 64 miles, and southbound for 53. The entire territory between Waukegan, Illinois, and Kavanaugh, Indiana, is blanketed on the 50-cent level from [fol. 672] both Spalding and Plainfield. (Tr. 617.) There is afforded a yardstick, because these rates were voluntarily established, by which to test the reasonableness of rates within the Chicago switching district or road-haul rates from zones to the Chicago switching district. (Tr. 618.) In I. and S. Docket 2649, involving stone rates within the Chicago district, Ex. No. 10 therein shows average freight revenue $16.46 per car on some 8 or 10 commodities moving via the Indiana Harbor Belt for the month of September, 1924. The total study covered 3226 cars, average revenue $16.46 per car, and in it were 678 cars of stone, average revenue $23.47 per car. The exhibit was offered by the Indiana Harbor Belt in that proceeding. (Tr. 618.) The per-car revenue on stone traffic in the switching district is about $8.00 or $9.00 higher than the average on other commodities, and is far greater than the average per car on all classes of traffic handled by the Indiana Harbor Belt, its annual report for 1926 showing $8.16 average revenue per car. (Tr. 619.) That figure is contained in the report to the stockholders for the year ended December 31, 1926, page 16. On the same page it shows $8.35 average per-car revenue for 1925. (Tr. 619.) Based on the business of my own company since the adjustment in Docket 17817, there has been an increased consumption of both stone, sand and gravel in the Chicago district, but sand and gravel increase has been more pronounced than in stone consumption. Since the time referred to stone shipments increased 10 per cent in 1926 over 1925, with the sand and gravel increase 24 per cent. (Tr. 619.) The total investment in the stone industry in the Chicago district for the seven companies represented by me is approximately $8,500,000. (Tr. 620.) If the proposed rate increases become effective, based on 1926 tonnage the increased revenues will be $382,935.71, or 40.85 per cent. If we could save these increased charges we [fol. 673] could pay about 4 per cent on the industry investment. (Tr. 620.)

There has been a very pronounced increase in trucking of stone in the Chicago district direct from the quarries, and a substantial increase in volume of water-borne stone. (Tr.

620.) Stone has been trucked from the quarries clear down to the loop district. Under present tariffs applying within the Chicago district the shipper can designate only the originating and delivering roads, and the way traffic is handled is purely a matter of operation which the carriers decide. However, a shipper can use only the railroad on which he is located and the delivering carrier serving the consignee, but an industry served at point of origin by more than one railroad produces various factors which may determine the railroad that the shipper will use. In our business it is the rate. (Tr. 621.) If a two-line haul is available we would not use three lines with a higher rate than for two lines, and with a single-line haul available we would not use a two-line haul. The second consideration is the car supply, and third, time required in transportation, and the amount of carrier solicitation is considered.

Stone business is attractive to the roads serving the quarries, and keen competition exists in the solicitation of business. (Tr. 622.) Since costs are figured on the car as a unit, it seems to me that using per-car revenue as a basis would be more equitable as between commodities than a 100-pound basis. (Tr. 622.) Zoning the district would create discrimination, because industries in the same line of business are located on the north side, the west side or the south side, and in many cases right in the loop. The dealers in sand, gravel and stone are all over the district, and a line could not be drawn anywhere without creating discrimination against certain localities and as between certain carriers. (Tr. 623.)

[fol. 674] My opinion is that a fair charge under the present arrangement to the stone producers would be for a 100,000-pound car, marked capacity, $20.00 for a single-line; two-line, $25.00, and three-line $30.00 per car. Many commodities load less than crushed stone, sand or gravel. Giving consideration to charge per car, it would require application to cars 80,000 pounds and 60,000 pounds marked capacity. Using the $20.00 per car as basis, it could be scaled down to apply to 80,000 pounds and 60,000 pounds marked capacity cars, and scaled up from the one-line basis to two and three or more lines. This would result in the aggregate in higher revenues per car than were proposed in the tariffs under suspension. In those 3 cents was named for a single-line haul applying to 60,000-pound minimum, which would produce $18.00 per car. On the same

minimum the 3½-cent rate would produce $21.00 per car and the 4-cent rate for three-line hauls would produce $24.00 per car. (Tr. 624.)

Referring to Mr. Oliver's Ex. 13, page 11, there is shown crushed stone movement from Superior Stone Company to R. Chisholm via Indiana Harbor Belt and Baltimore & Ohio Chicago Terminal, a movement that cannot now be made since Supplement 16 to Galligan's I. C. C. No. 63 became effective July 27, 1927; such two-line movement being prohibited by the Baltimore & Ohio Chicago Terminal where both consignor and consignee are served by the same railroad.

Subsequent to July 27, 1927, the movement would be as indicated on page No. 12; a shipment from Federal Stone Company to R. Chisholm Material Company. The Federal Stone Company and the Superior Stone Company are separated by 47th Street, so the distance is identical. The 63-mile loaded haul shown on page 11 would be reduced to 31.04 miles under the required routing shown at page 12. (Tr. 625.) It would be practical to move this shipment via [fol. 675] another route with the haul of 13.3 miles being via Baltimore & Ohio Chicago Terminal McCook to Bellwood, Chicago & Great Western Bellwood to Forest Park, for redelivery to the Baltimore & Ohio Chicago Terminal for further movement from Forest Park to 48th Avenue; a feasible route. (Tr. 625.) The connection exists and the Chicago & Great Western is a tenant of the Baltimore & Ohio Chicago Terminal, using the latter's rails from Forest Park to the passenger station. (Tr. 626.) Forest Park industries and the Baltimore & Ohio Terminal passenger station are shown as industries on the Chicago & Great Western for business to and from Chicago via the Chicago & Great Western. Other carriers are tenants of the Baltimore & Ohio Chicago Terminal, and in view of the joint facilities and numerous operations in the Chicago district, it would seem reasonable for the Chicago & Great Western to accord to the Baltimore & Ohio Chicago Terminal trackage rights between Bellwood and Forest Park, a distance of 2.8 miles. From McCook to Bellwood is 6.9 miles; Bellwood to Forest Park 2.8 miles; Forest Park to 48th Avenue 3.6 miles; making 13.3 miles. (Tr. 626.)

Page 14 shows shipment from Consumers Company quarry at McCook to McClintic-Marshall Company, 87th Street, on the Belt Railway, the McCook quarry being served by the Indiana Harbor Belt and Chicago & Illinois Western Railway. The shipment from McCook via the latter and the Belt Railway of Chicago to the consignee named would involve a haul of 18.9 miles as compared to the 46.6 miles shown by route of movement. The route mentioned exists. (Tr. 627.)

Page 27 of Ex. 13 shows car shipment of ice from Consumers Company, Englewood, to Illinois Central freight house at South Water Street. Instead of moving from [fol. 676] Consumers Company plant to Englewood, thence south to Colehour and west to Fordham and north over Illinois Central from that point to South Water Street, the shipment could move from Englewood to 55th Street, thence north over the Pennsylvania's line to St. Charles Air Line at 16th Street, of which the Illinois Central is a part owner, and thence east over the St. Charles Air Line to the Illinois Central and thence north to South Water Street. This movement would be about one-quarter of the distance via that which this loaded car traveled. (Tr. 627.)

On page 37 are shown car shipments from A. C. McLaughlin quarry, Bellwood, to Central Lime & Cement Company at Cragin, via Indiana Harbor Belt and Chicago & North Western. The Indiana Harbor Belt and the Chicago & North Western connect at Proviso, but the tariff covering these shipments and the one under suspension in this proceeding restrict movements between industries on the Indiana Harbor and those on the Chicago & North Western under the 2½ cent rate to interchanges via Wood Street. The shortest workable route would be from quarry at Bellwood 1½ miles north to Proviso, thence east by Chicago & North Western to 40th Avenue and thence to Cragin, a haul of 11½ miles, or ⅕ the distance the shipments actually traveled. (Tr. 628.)

During the test period we kept, at such of the Consumers Company retail yards in Chicago as were located on the test roads, a record with reference to the service performed in handling switching. (Tr. 628.)

The record was kept to determine length of time serving industries in placement of loaded cars and the removal of the empties. I have here record of one year, showing ar-

rival of engine at 10:25 A. M., the placement of 11 cars, and departure of the engine at 10:35 A. M., or 10 minutes for the placement of 11 cars. This was October 18, 1927. Illinois Central engine 256, and the service performed at [fol. 677] South Water Street. On same date the same engine, at 3:15 P. M., entered the yard, placed 4 cars and left 5 minutes later. The next morning engine 309, at 9:15 A. M., placed 3 cars and departed at 9:30; and on the same day the same engine, at 2:40 P. M., placed 5 cars and departed at 2:45 P. M. The same day at 8:50 P. M. engine 282 placed 4 cars, departing at 8:55 P. M., and the same engine at midnight placed 7 cars and departed at 12:05 A. M. (Tr. 629). October 20th engine 285 placed 3 cars at 9:10 A. M., departing at 9:15 A. M.

In view of the expense set up in the carriers' study for industrial switching, and based on the service at this yard, it seems, on performance outlined, industrial switching charges in excess of $1.00 per car, are very much out of line and abnormally high. Out of our McCook quarry we will average approximately 125 cars per day, some days 150 cars. To the yards of building material dealers stone moves in 2- or 3-car lots. To our own distributing yards the shipments move 5 to 20 cars per day. (Tr. 630.)

As to car detention at the stone quarries, almost without exception the cars are loaded and billed the same day they are furnished. We investigated car detention at quarries in transit and at destination on all shipments in the months of August and October, 1927, those being the test periods, at certain of our yards. Allowing an entire day between placement of order for empty and the furnishing of car, and one entire day for loading, the transmission of billing instructions to the billing station, and taking actual time in transit between point of origin and placement at unloading point, the total elapsed time was 4.34 days at one yard and 6.53 at another yard. The average time in transit is considerably in excess of minimum time. The minimum time is substantially one-half the total time; and at one of our yards the average time elapsing between [fol. 678] ordering the empty car and releasing the same at destination was 3.69 days, and at another yard 4.48. The cost study shows 7 and a fraction days for a two-line haul. My illustrations involve two-line hauls. (Tr. 631-632.)

The only commodities moving in as large volume as crushed stone to and within the Chicago switching district would be interplant movements of coal and iron ore at the steel plants; and where freight is paid I know of no commodity that moves in such large volume as stone to and within the Chicago district, or that pays higher revenues per car and is one of the lowest-grade commercial commodities moving within the district. (Tr. 632.) My understanding is that Docket 20006, being heard with Docket 19610 and I. and S. Docket 2900, involves application for reduction in slag rates. I may desire to offer testimony in Docket 20006, but that will depend entirely on the character of the testimony introduced therein by complainants. Slag rates at the present time are on the same level as crushed stone, which commodities are competitive, and a lower basis is sought on slag in the district. (Tr. 633.) The stone quarries are located on the outer rim of the Chicago district and require rail transportation. The territory is a considerable distance from any congestion, but those quarries have to compete with wagon quarries located closer to the heart of the town, which do not require rail transportation. The wagon quarries set the price so far as stone is concerned, subject to the influence of single-line gravel competition from Zones 1, 2 and 3. There is a very substantial stone movement from quarries on the outer rim of the district to retail yards 5 or 6 miles in the district, and such stone is delivered to the retail yards by truck in many instances. (Tr. 634.)

[fol. 679] Cross-examination.

By Mr. Walter:

We have business to points on the Chicago, Milwaukee & St. Paul, Chicago & Northwestern, the Chicago Great Western, and the Soo line at outlying stations taking the ½ cent arbitrary over the general rate. Under the so-called Evanston line haul rate we buy substantial quantities of coke shipped from the by-products plant on the Chicago Short Line to yards in the vicinity of Rogers Park. The Evanston rate applies under the intermediate application. The rate is $1.01 per ton, whereas just a short distance south the rate is 60 cents per ton. The additional haul is several miles. (Tr. 635.) The navigable waters of the

Chicago district can be indicated from Exhibit 15 which shows water routes. Freight may be moved by water as far North approximately as Lawrence Ave., indicated by the intersection of lines I and 6 (Tr. 635) for light draft boats. Lake steamers have repeatedly handled cargoes to Fullerton Ave., indicated by lines J and 8. The distance depends on draft of the boat. A water movement is contemplated to Weber, indicated on the map at intersection of lines H and 2. On the South branch of the Chicago river, my company operates a fleet of barges and tugs between Lemont, about 26 miles Southwest of Chicago, a point beyond this map, and various deliveries in Chicago. Lake steamers can operate in the South branch of the river as far as 35th St. and lighter draft steamers a greater distance. Coal is brought in cargo loads to Hedstrom-Schenck dock at 35th St. and has been for a number of years. (Tr. 636.) In the South Chicago district, freight may be handled by water to points inside the coast line, via lake steamers up or down Calumet river as you choose to go. The boats go inland from South Chicago quite a distance. (Tr. 637.) A harbor extension is proposed to make Lake Calumet a seaport. The Chicago and Northwestern has grain elevators at Irondale which would be available to water transportation upon completion of the harbor development. Lake vessels can move as far as [fol. 680] 118th St. south of Irondale. The new Ford plant is on the turning basin. There is a canal system which permits water movements from Indiana Harbor to inland points of coal, iron ore and stone by lake steamer, distance about 3 miles. They move beyond the lines of the railroad along Lake Michigan and through the line on the map marked "Canal", toward East Chicago. (Tr. 637.)

Large consumers of stone that could use the water movement direct from quarry to their plants without use of rail lines, are Inland Steel Co., Federal Furnace Co., Youngstown Sheet & Tube Co., Wisconsin Steel Co., and Illinois Steel Co., both at Gary, as well as South Chicago. There are numerous other large consumers which could be served by water as well as civic projects and building development projects that could also use water transportation. (Tr. 638.) We have a distributing plant that could be served by water to the branch and thence by truck serve additional territory beyond that which we now reach.

We have such branch yard on the water front and utilize it at the present time as well as other locations that we could utilize in the future. We handle cement by truck. (Tr. 638.) We use our own trucks from Buffington, Indiana, in competition with the present rate because more economical than handling by rail. The truck movement is a very substantial amount, but I would prefer not to quote figures. I am satisfied with the present rates of sand, gravel and stone as published, aside from the ½c arbitrary and the line haul rates; but if an increase in the general level of rates is to be granted, then I think they should be published at least on crushed stone, sand and gravel, on a per car basis; I would even extend that to all commodities. All transportation of crushed stone by rail is in railroad owned equipment. (Tr. 639.) I do not have available the [fol. 681] exact figures here but I would say that about 75% or 80% of the stone tonnage handled within the district now moves by rail, even though we could move the tonnage cheaper by truck or water, because we are cooperating with the city administration in an effort to eliminate congestion on the streets. The public interests would suffer seriously though our private interests might be better served if the tonnage was transferred from rails to trucks. (Tr. 640.) At the present time there is no stone movement by barge between points in the district. We had at our McCook quarries a water connection, discontinued by reason of local conditions so that the first water point beyond the district from which stone is handled by boat is Lemont. The water connection at McCook can readily be reestablished.

Our dock distributing yards have rail facilities. Stone from Lemont to one of our dock yards is not reshipped by rail. It is delivered from the dock yards after receiving it by water or by motor truck to the point of consumption. The dock yards are served by the Chicago, Milwaukee & St. Paul and the Chicago & Northwestern, and they are located at Deering station, known as yard No. 66, and served jointly by the 2 roads mentioned. (Tr. 641.) Goose Island Yard is served by the Chicago, Milwaukee & St. Paul and another at Lock Street that can be served directly by the Chicago & Alton. The first two dock yards are on the North branch of the Chicago River. Weber is shown on the map, Exhibit No. 15, at the intersection of lines H & 2.

I prefer not to state the contingency involved in the contemplated barge transportation to Weber station. There is rail movement to Weber at the present time. It is served by the Chicago & Northwestern Railway. (Tr. 642.) My testimony covers crushed stone only in so far as movements between points in the Chicago Switching District are concerned. My Company handles a great deal of [fol. 682] sand, and gravel, as well as crushed stone, but my testimony is connected with crushed stone in the district and has nothing to do with the sand and gravel movement within the district. (Tr. 643.) The reasons given for not changing our crushed stone rates are competition of sand-suckers, stone quarries exclusively served by wagon and movement of crushed stone by water, and the competition with gravel moving from towns outside of Chicago in Illinois, Indiana and Wisconsin. (Tr. 644.) The level of gravel rates from the zones would probably be of more importance than any of the other factors. (Tr. 644.) The gravel rates were recently approved by the Commission in Docket No. 17,817 and with relation to the rates within the district and our shipments of crushed stone and gravel from Joliet to Chicago. The Joliet rates are now pending before the Commission in Docket No. 19,557, and is primarily a discrimination case in which a proposed report has been published and the case argued. (Tr. 645.) The car rate of $20.00 suggested by me for a single line haul was based on 100,000 pounds and compared that car rate with the proposed rate based on 60,000 pounds showing the $20,000 figure to be $2.00 greater than the proposed 3c rate applied to the 60,000 pound minimum for a one-line haul and said that rate could be scaled down as the minimum decreased. Scaling down from 100,000 pounds, I would suggest $16.00 for an 80,000 pound car, $12.00 on a 60,000 car for a single line haul; scaling the $25.00 charge on 100,000 pound car to 80,000 pounds, would say $20.00, and on a 60,000 pound car, I would say $15.00 for 2 line hauls; scaling the $30.00 charge to an 80,000 pound car I would say $24.00 and $18.00 for a 60,000 pound car for 3 line hauls. My proposition would involve both increases and reductions, but have not tested it by application to [fol. 683] the size of cars involved in district movements because those facts were not available to me. The figures of $16.00 and $12.00 applying to the 80,000 and 60,000 cars

respectively would mean reductions under the rates proposed. (Tr. 647.) But $20.00 is an increase and applied to open top car movement with practically no 60,000 cars in that service and but very few 80,000 pound cars therein, the average in the open top car would be at least 100,000 pounds if not greater, as new open top cars will load 140,000 pounds and upwards. (Tr. 648.) The car rate applied to the 100,000 pounds would not be to the advantage of the man having a commodity loading to that capacity over the shipper loading 60,000 pounds at the $12.00 rate, which in my opinion would take care of the lighter loading commodities, but you could grade it up above the 100,000 pounds just as well, to take care of that, (Tr. 648) and I would not object to that. (Tr. 649.) The figures proposed are higher for the 100,000 car than those proposed by the carriers on the 60,000 pound basis, but figuring 50 tons, the 100,000 pound car which we would expect to load to capacity, the proposed rate is 60¢ per ton, which would make $30.00 per car and in that sense my proposal is less than what the carriers propose. (Tr. 649-650.) The present switching rates on stone were fixed in I. & S. 2649. The I. & S. case was consolidated with another one. The present 40¢ single line rate on stone is the same as on other commodities via railroads that publish 40¢. (Tr. 650.) The cost figures given by me apply only to the production of my company. (Tr. 650.) A cubic yard of stone weighs about 2,500 pounds and a cubic yard of gravel about 3,000 pounds. The Chicago & Illinois Western connects directly with 6 lines, I believe. There is no difference in the intrastate stone one line rate in the district and the joint haul rate in the district except 10c via [fol. 684] certain roads. That is not true as to stone or gravel coming in. (Tr. 651.) On gravel coming from outside the district on a two line haul, it would pay a differential but the stone in competition with the single line gravel is a 2 line movement. In the 10% increase in stone shipments mentioned, I was talking about rail shipments exclusively in that comparison. We do not always handle shipments by water or by truck because it is cheaper than rail movement because of the reason given in answer to Examiner Faul and because the question of load factor must be considered. We must consider car supply. There are physical limitations, we have break downs and many

other conditions to contend with, all of which influence our determination as to method of moving our traffic and where from. (Tr. 652.) My intimation was that if rates were increased, we would be forced to make more of our shipments by truck and by water. There are a number of different reasons for not using trucks, even though more economical. You can load a 50 ton car of stone in much less time than loading 50 tons of stone on a number of trucks and if our business at any one of the quarries was handled exclusively by truck, we would not be able to produce in a day or a given period of time the volume of tonnage that we are able to produce through shipping by water or rail and as production increases in volume, your cost per unit increases. (Tr. 653.) Referring to Exhibit 13, page 37, I understood the cost study showed actual route of movement and my comment was directed to rearranging junction points through which traffic now moves and much shorter hauls would be possible. I am fairly conversant with the service conditions involved, if the shipment referred to on page 37 of the exhibit had been delivered to the Chicago & Northwestern at Proviso and then having it turned back or delivered to [fol. 685] Cragin as compared with the way the shipment actually moved. I do not know what the cost figures would be to handle it via the route suggested, but cannot conceive the cost being as high as via the route the shipment moved. It does not seem reasonable to me. (Tr. 654.) I did not give more weight to distance than to other cost factors in moving the shipment. (Tr. 654.) The spread between distance via the route I suggested and route of movement is so great that in my mind there could be no question as to the saving that could be accomplished by making a change in the present route. (Tr. 655.) In using the shorter route, I cannot conceive of any necessary increase in force because the new freight terminal of the Chicago & Northwestern has just recently been opened at Proviso. There is an adequate force, in my opinion, at that point, to handle an increased volume of business and a force at 40th St., at the present time that could handle that volume of business; (Tr. 655.) and over the routes I suggest, would take it away from the congested area of Wood street through which it now moves and put it in open area.

I think there should be an all commodity basis of rates in the district and that our commodity loading heavier and

moving in large volume sometimes in train-load lots should not be treated differently than a single shipment. (Tr. 656.) At the car rate of $20.00 proposed for 100,000 pound car, we would probably load to 110% of marked capacity, (Tr. 656.) but my proposal is to apply the $20.00 regardless of the weight loaded in it. Some railroads have a 10% overload limit and others do not. If we trucked from the quarries to the delivery points we would put an additional number of trucks on the road and if instead of transportation by barge we trucked directly to point of consumption, we would increase congestion. As to failing to make shipments by water, because of less cost, we must give con- [fol. 686] sideration to the load factor at the various plants. At the plants shipping by water, we might also have orders for down state shipments which would move out by rail. It would necessitate a rearrangement of our entire structure to change over night. We have one plant shipping extensively by barge, (Tr. 658.) and a very substantial portion of its output moves by barge. An increase in water shipments from that particular plant will result in cessation of rail shipments and necessitate an increase in our crushing facilities if we convert that plant to supply water movement would require additional capital investment which we desire to avoid.

Redirect examination:

To handle our entire production at any one plant by truck, if we quit shipping by rail and move the entire stone output by truck would require a considerable additional investment. (Tr. 660.)

F. D. McElroy was called in behalf of intervenors and was duly sworn and testified.

I represent the Whitaker-Greer Fire Proofing Co., operating a hollow building tile plant at Chicago Heights, Illinois.

The Hobart case which has been referred to was a formal complaint claiming rates from Hobart, Indiana to points throughout the Chicago switching district were unjust and unreasonable and unduly preferential in favor of Chicago Heights in violation of Section 3 (Tr. 661) and in violation

of section 13 of the act, in that it was claimed that the Chicago Heights rate was so low as to cast a burden upon Interstate Commerce. The preferential rate complained of was the 50¢ switching rate applying from Chicago Heights to points within the Chicago Switching District, via the Baltimore & Ohio Chicago Terminal, which is a strictly [fol. 687] switching road with a terminus at Chicago Heights and the rate complained of has been maintained since 1911 and was exactly the same basis applied from other stations on its line in the Chicago Switching District. (Tr. 662.) Chicago Heights is not asking for a lower basis of rates. We merely ask to be left as we are. (Tr. 662.) We pointed out in the Hobart case that the rate from Hobart to Chicago of $1.05 per ton was the local rate of the Pennsylvania Railroad and not concurred in by the Baltimore & Ohio Chicago Terminal, and we answered the discrimination charge by showing under an alternative order entered by the Commission, the Baltimore & Ohio Terminal had no power to remove the discrimination either by reducing the Hobart-Chicago rate nor did the Pennsylvania have power to remove it by increasing the local of the Baltimore & Ohio Chicago Terminal. In addition, we showed the large volume of traffic moving in switching service between Chicago Heights and points in Chicago District over Baltimore & Ohio Chicago Terminal by a train leaving East Chicago in the morning moving to Chicago Heights with inbound traffic picking up outbound loads at Chicago Heights the same day and delivering them at Barr Yard for connecting lines or for deliveries on the Baltimore & Ohio Chicago Terminal during that day. (Tr. 663.)

No evidence was offered in the original record in the Hobart case as to transportation conditions surrounding movement of traffic from Hobart, Indiana, to points in the Chicago switching district, other than one general statement made by traffic witnesses for the Pennsylvania. The only plant of consequence at Hobart is that of the National Fireproofing Company, the complainant in that case, which also has a plant at Pullman, Illinois, in the Chicago switching district. (Tr. 664.) Pullman, Illinois, has the same basis of rates from that plant throughout the Chicago district as applies from that plant throughout the Chicago district as applies from Chicago Heights, which complainants

have had since 1911, when the Lowrey agreement was entered into. The situation is shown on page 1 of my Ex. 49. [fol. 688] (Said exhibit received in evidence and marked "Ex. No. 49, Witness McElroy.") This shows the rate maintained by the Baltimore & Ohio Chicago Terminal from 1911 to date is on same basis as switching rates applicable within the Chicago district, which applies from Pullman and the plant of the National Fireproofing Company at that point. (Tr. 664.) Whenever a change in the Chicago Heights-Chicago switching district rates has been made by the Baltimore & Ohio Chicago Terminal a like change has been made from Pullman via the Pullman Railroad serving the National Fireproofing Company at that point, applicable to connecting line deliveries throughout the switching district. The exhibit shows Hobart has never been on the Pullman basis or the basis applying at Chicago Heights. The first Chicago Heights-Chicago rate was $5.00 per car, but in two or three years it was increased to $5.50. It was published in 1900 and maintained by the Baltimore & Ohio Chicago Terminal until 1911, when the Lowrey agreement was entered into. (Tr. 665.) The Chicago & Eastern Illinois Railway maintained its contract rate of $5.50 until the year 1917, so that it had been in effect for at least seventeen years via the route of the Chicago & Eastern Illinois for single-line deliveries. The rate of 40 cents per ton was published May 1, 1917, since which time the Chicago & Eastern Illinois Railway Company has ceased to be a factor in handling Chicago Heights switching district traffic, and that traffic has been handled via the line of the Baltimore & Ohio Chicago Terminal until very recently. (Tr. 666.) General Order 28 increased all brick and hollow tile rates 2 cents per hundred pounds, and the Chicago & Eastern Illinois applied the 40-cent per ton increase to its brick and hollow tile rates moving from Chicago Heights. (Tr. 666.) Inside the switching district the 40-cent per ton advance was not applied to switching move-
[fol. 689] ment. Those rates were increased 25 per cent. Again the Baltimore & Ohio Chicago Terminal treated Chicago Heights exactly like its industries within the Chicago switching district and applied to the hollow building tile and brick rates a 25 per cent increase, thus maintaining the parity between Chicago Heights and the Chicago switching district. (Tr. 667.) In August, 1920, the Com-

mission allowed a 40 per cent advance in all rates east of the Mississippi River, but the Chicago & Eastern Illinois advanced its rate but 33⅓ per cent, the increase permitted by the Illinois Commerce Commission at that time; but on July 1, 1922, the Illinois Commission permitted the full 40 per cent advance, resulting in a ton rate of $1.01. In October, 1922, as a result of the Commission's decision in the General Brick case, 68 I. C. C. 213, the Chicago & Eastern Illinois again revised its rates, but the Commission stated in that case that switching rates from points just outside established switching districts of large cities were not involved. (Tr. 667-668.) Baltimore & Ohio Chicago Terminal rates had always been considered as Chicago's switching district rates, and following the Commission's decision last referred to, that carrier did not revise its rates between Chicago Heights and the Chicago switching district, nor were the brick and hollow building tile rates revised between those points. As just stated, the Commission said rates on hollow building tile in Chicago Heights were not involved in that case. It could not enter an order because they were not involved. The Commission excepted them from the general investigation. I was talking about the General Brick case. (Tr. 668.)

Chairman Campbell: I have been waiting for the witness to get to the point. I supposed this was all leading up to something, but so far nothing has been given except a history of the Hobart case. (Tr. 669.)

[fol. 690] The Witness (continuing): On August 1, 1927, the examiner who heard the Hobart case found in his tentative report that the rates from Chicago Heights——

Mr. Davis: We object to what the examiner found, as there was a decision by the Commission. (Tr. 670.)

Chairman Campbell: What the examiner found would not be pertinent, and I do not see the pertinency of the decision itself. You can refer to it by reference and in your brief, but there is no necessity for your reviewing the case here.

The Witness (continuing): As a result of the Commission's decision in the Hobart case the Baltimore & Ohio Chicago Terminal increased its hollow building title rate to $1.05 per ton and on common brick 84 cents per ton, and

these rates were suspended by the Commission before they took effect. (Tr. 671.) On August 1, 1927, the Chicago & Eastern Illinois asked the Commission's authority to reduce its hollow building tile rate, then $1.05 per ton from Chicago Heights to Chicago, to the basis in effect from Pullman, namely, 50 cents per ton for comparable service; (Tr. 671) which was granted under special permission No. 82760, which thus placed Chicago Heights brick and tile rates via the Chicago & Eastern Illinois Railway on the same basis as rates on lines serving Pullman. (Tr. 671-672.)

Sheet 2 of my Ex. 49 shows the same basis of rates applying on hollow building tile from Chicago Heights to connecting line deliveries in the Chicago district as from Pullman, the basis in effect since 1911.

Page 3 of Ex. 49 is an excerpt from Saur's Exs. 7 and 8, showing brick and tile handling cost between Chicago Heights and points in the Chicago switching district, as compared with points in the district. The operating cost of $19.43 for single-line hauls, or for joint-line hauls via [fol. 691] the Baltimore & Ohio Chicago Terminal and Chicago Heights Terminal Transfer Company, includes not only the cost via the former but the $6.00 tariff charge of the latter. A cost study of the Chicago Heights Terminal transfer Company traffic was not made. (Tr. 672.) The Illinois Commerce Commission made such examination of the Chicago Heights Terminal Transfer Company costs on September 25, 1923, covered by Ex. No. 1, Witness Tuthill, in Illinois Commerce Commission Docket No. 12595, which showed for year ending 1920, average cost per loaded car on that terminal railroad was $3.02. Deducting $6.00 from $19.43 and adding $3.02 to reflect actual cost on the Chicago Heights Terminal, the cost of moving traffic between Chicago Heights and Chicago switching district is not greater than in the Chicago switching district, but in fact is less. (Tr. 673.) If the $1.05 rate is ordered established by the Interstate Commerce Commission from Chicago Heights to Chicago, and the Pullman rates within the district remain as they are, Chicago Heights will suffer the same discrimination that Hobart complained of in its rate to Chicago. The National Fireproofing Company owns the only plant at Hobart and owns the plant at Pullman within the Chicago switching district. In the original case Mr. Councill testified and this was back in 1925. (Tr. 673.)

Mr. Davis: That is objected to.

Chairman Campbell: The objection is sustained. Let us not go into that. The question here is whether Chicago Heights should be granted Chicago switching district rates. You have gone into your cost study, your movement, and all things which you say justify giving Chicago Heights the Chicago switching district rates. Let us not go into that other case in this one. (Tr. 674.)

The Witness (continuing): The mileage from Pullman to points throughout the Chicago switching district is not [fol. 692] materially different than mileage from Chicago Heights to points throughout the Chicago switching district. As to mileage Pullman can claim no different treatment than Chicago Heights. If the General Brick case is to furnish basis for level of rates on brick and hollow tile within the Chicago switching district, mileage from Chicago Heights would justify a 90-cent per ton rate to all deliveries south of an east and west line drawn through 63d Street from Lake Michigan to the boundaries of the Chicago switching district. (Tr. 675.)

Cross-examination.

By Mr. Cardy:

I understand the National Fireproofing Company at Pullman is operating today and producing hollow building tile. (Tr. 675.) There has been no changed condition from the time the Hobart case was tried and up to date with reference to the operation of the Pullman plant. The plant is now working and was when the Hobart case was tried, though they claimed it was going to be closed within a year.

Cross-examination.

By Mr. Pierce:

I am advocating the exact basis of rates from Chicago Heights to points throughout the Chicago switching district as the Commission fixes for application within the Chicago switching district, whatever that basis may be. The Hobart case is the only one except the Berenice case that changed the Chicago Heights rate basis to points within the Chicago district. (Tr. 676-677.)

W. M. COUNCILL, called and duly sworn, testified as follows:

Direct examination:

Am traffic manager of National Fireproofing Company, with plants at Hobart, Indiana, and Pullman, Illinois, serving the Chicago market. (Tr. 677.) In 1924 my company filed complaint with the Commission against the $1.05 rate published by the Pennsylvania Railroad on hollow building [fol. 693] tile carloads from Hobart, Indiana, to points in the Chicago switching district. It was assigned as Docket 16563 and was consolidated with Dockets 16116 and 16392 and heard May 13, 1925, and decided January 20, 1927. The Commission among other things found that rates of 50 cents and 60 cents per ton were published on articles in the uniform brick list from Chicago Heights to points in the Chicago switching district, both interstate and intrastate and were unduly preferential.

Mr. McElroy: I object to this testimony, if the Commissioner please.

Chairman Campbell: Go ahead. He is not saying a thing more than you did.

The Witness (continuing): Were unduly preferential to Chicago Heights and unduly prejudicial to Hobart, Indiana, and Chicago Heights carriers were ordered to cancel those rates on or before April 5, 1927, and apply rates not lower than those contemporaneously published from Hobart, Indiana. (Tr. 678.) The carriers complied with the Commission's order after the latter had denied a petition of the Chicago Heights interests to reopen. The Commission later suspended the tariffs of the carriers establishing rates ordered in the Hobart case, and the Hobart situation was assigned for disposition in I. and S. Docket 2900. On June 2d the Commission denied our petition to vacate its suspension order which carried both Dockets I. C. C. 16563 and I. and S. 2900. We are here today to call to the Commission's attention its decision in Docket 16563 and related cases, and to answer any question that the Commission or anyone else may propound regarding carrying out the Commission's order. In asking equalization of rates from Hobart to Chicago versus Chicago Heights we are not asking for more than carriers are asking for industries at Chicago Heights, that is, an

equalizing of commercial opportunity or recognizing com-
[fol. 694] petitive conditions. (Tr. 679.) The tile plant at Chicago Heights has tied their situation in with the general investigation of rates from Chicago Heights. There are many more industries in Chicago Heights than at Hobart. We do not think all industries at Chicago Heights should be given equal rates with competitors in the Chicago district while one industry at Hobart be denied the same treatment accorded one industry at Chicago Heights with which it competes in the same Chicago district. (Tr. 680.) The Chicago Heights plant has always been in a position to give consumer, contractor or dealer lower prices equivalent to their freight rate advances.

A 4-inch partition tile weighs 16 pounds and they are sold per thousand, which weighs 16,000 pounds or 8 tons. Chicago Heights pays 50 cents per ton single-line and 60 cents for two-line hauls, 27 miles via the Chicago & Eastern Illinois and 30 miles via the Baltimore & Ohio Chicago Terminal. Hobart pays $1.05 for 35 miles, a difference of 55 cents and 45 cents per ton respectively or an average difference of 50 cents per ton. This difference on a thousand pieces of tile represents $4.00. (Tr. 680.) Jobs such as hotels, apartment and office buildings use 300,000 of these partitions, and no contractor would pass up $1200.00 saving on a single item. An equalization of rates between these plants would correct that condition. If such conditions are equalized by the equality of freight rates where justified the brick and tile manufacturers will quit running to the railroads asking reductions in their rates and revenues. (Tr. 681.) We have no quarrel with the Chicago Heights industry, but we object to its competitive advantage in the Chicago market. We do not want brick and tile rates adversely affected by what may be found to be proper competitive rates on iron and steel or other
[fol. 695] commodities manufactured at Chicago Heights. We do not think the tile plant at Chicago Heights should endeavor to get into the district on rates that might be proper on iron and steel or some other articles. (Tr. 681.) The principle established in Docket 16563 was a parity of rates Chicago Heights versus Hobart and Chicago, the relationship being more important than the level in a short-haul market. We are satisfied with the hollow

building tile rate Hobart to Chicago at any level up to $1.05 as a maximum, if the rate is fixed from both points. If Chicago Heights is in the Chicago switching district the situation would not be equalized by Hobart being brought into switching limits, as Gary is between Hobart and the Chicago district and we understand that Gary is not to be brought in the Chicago district. If so, there would be no possibility of bringing Hobart into switching limits, and the situation could not be equalized if Chicago Heights is brought into the Chicago switching district. (Tr. 682.) If the Commission should find a rate less than $1.05 per ton is justified on hollow tile from Chicago Heights to the Chicago district, then we respectfully ask that it give carriers the positive order as to the manner in which the rate from Hobart is to be equalized, in order to remove the discrimination the Commission found in Docket 16563, and so modify its findings in that case to such degree as may be necessary to accomplish that. (Tr. 683.) Inquiry among the carriers, at least the Pennsylvania, which serves Hobart, does not indicate it would be their purpose to give Hobart the same rate to the district as Chicago Heights, if the latter is given the Chicago district rates. Docket 16563 and the cases with which consolidated involve rates on tile into Chicago, which rates into the Chicago district have been from time to time built up by the Commission and the Chicago Heights plant is the only one not yet tied to this structure; and any advantage in rates from Chicago [fol. 696] Heights involves the entire rate structure on brick and tile into the district. (Tr. 684.) The order in the Hobart case has not been modified, but the question whether Chicago Heights shall have the district rate is involved in I. and S. 2900, and depending on I. and S. 2900, it may be necessary for the Commission to take some action in the Hobart proceeding. (Tr. 685.) But what was the question is also involved before the Illinois Commission in 17250 and perhaps in 17269 in the petition filed with it asking suspension of tariffs on intra-state traffic. (Tr. 685.)

Reference has been made to the plant now owned by this company at Pullman as competitive with the tile plant at Chicago Heights. The plant is on the Pullman Railroad 13 miles from the downtown loop district. Two-line rates have always applied from that plant, as we are located

on an industrial railroad, with no other rates from points on that line except to industries having private sidings in the district. The Pullman Railroad has direct connection with the Illinois Central at Kensington, the Chicago, Rock Island & Pacific, and the Belt Railway at Pullman Junction. All movements over other lines are three-line hauls. (Tr. 686.)

Ex. 16 in Docket 16563 shows charges on cars to 49 team tracks in the city of Chicago. In 44 instances the rates from Pullman to these deliveries were higher than from Chicago Heights to the same or adjacent deliveries. (Tr. 686.) The other 5 the rates from Chicago Heights and Pullman were identical.

Mr. McElroy: I renew my objection to any testimony referring to rate statements introduced in the original case unless put in evidence here.

The Witness (continuing): That was a matter of record. It has been inferred that our charges from Pullman are lower than they are from Chicago Heights, and that we have an advantage over the Chicago Heights plant, which I [fol. 697] am simply endeavoring to show is not the case.

Examiner Faul: You may show what the rates actually are.

The Witness (continuing): Galligan's Tariff 21 covers rates now under suspension, and proposed to increase two-line hauls from 2½ to 3 cents, and three-line from 3 to 4 cents per hundred. (Tr. 687.) The Pullman Railroad's Tariff I. C. 21, 22 and 23 provide through rates to points not covered in Galligan's Tariffs an increase of 1 cent per hundred pounds, the same as the Galligan rates. The Pullman Railroad proposed to increase local rates between industries on its rails and junction points with connections, from 1½ cents to 2 cents.

Taking three typical team track deliveries in Chicago under the proposed increased rates, the rate from Pullman to team track on the Belt at Kenton and Division Streets will be 4½ cents, made up of Pullman 2 cents and Belt Railway 2½ cents. (Tr. 688.) Pullman is treated differently from other plants in the Chicago district because on a terminal railroad, involving an extra charge to all team track deliveries, but we cannot say whether different than plants on the Chicago, West Pullman & Southern, Illinois North-

ern, or the Chicago Junction Railway. What I am trying to show by these rates is that charges from Pullman to these team track deliveries will be higher than the proposed basis of 3½ cents and 4 cents from Chicago Heights. I am not objecting to the proposed rates from Pullman to points in the Chicago district, and did not enter any protest (Tr. 689); but there has been injected in this hearing an attempt to impress the Commission with the fact that the rates from Pullman on tile to deliveries in Chicago are lower than from Chicago Heights, and I feel that it is proper to show that is not true, even though I do not object to the rates from Pullman. (Tr. 690.) I am not [fol. 698] objecting to the Pullman rates as proposed. I am quoting what they will be and how they compare with the rates from Chicago Heights and with what the rates will be from Chicago Heights if that plant rides into Chicago with the other industries. (Tr. 691.) The delivery I referred to results in a 4½¢ rate from Pullman or 90¢ per ton. For Belt Railway delivery from Chicago Heights, the rate would be the same. To team track deliveries on the Baltimore & Ohio Chicago Terminal, the Pullman rate will become 5½¢; 2¢ for the Pullman railroad and 1¢ for the Belt Railway and 2½¢ for the Baltimore & Ohio Chicago Terminal. The movement from Chicago Heights in that case would be via the direct line. (Tr. 691.) Those are Lowrey tariff rates. We have no through rates from Pullman except to industries. All rates from Pullman are made on conibination of these local factors covered by tariff within the district. (Tr. 691.) I think to all team track deliveries the rate is made on combination of each lines charges. The point I make with respect to Pullman vs. Chicago Heights is that the latter is on a terminal railroad. We have to pay an extra charge, which in all cases equals the combination and makes ours greater than the Chicago Heights charge. (Tr. 692.) That advantage results that a single line haul is involved from Chicago Heights, via the Baltimore & Ohio Chicago Terminal which applies the single line rate to its team tracks and we have to use 3 lines to get to the same point. (Tr. 693.) Tile produced at the Pullman plant is not generally accepted among dealers in the general trade and we use it through our own construction department in Chicago which goes to many of the team tracks in the city, depending upon where the brick is. (Tr. 694.) The situation is this, as to Chicago Heights on

[fol. 699] shipments of hollow building tile to points on the Baltimore & Ohio Chicago Terminal, for team track deliver we are required to pay the aggregate sum of each individual line's charges to reach team tracks on that terminal, while the Chicago Heights manufacturer has the opportunity of shipping over a single line at single line basis of rates; and if Chicago Heights is included in the Chicago Switching District, its rates to the industrial deliveries would be identical with those applied from Pullman. (Tr. 695.) If the $1.05 rate remains from Chicago Heights, we would have to the industries, the Lowrey basis of rates, of 2½¢, 3¢ and 3½¢ from Pullman to the same industries. (Tr. 696.) Certain team tracks are shown as industrial tracks, Lowrey Tariff 21, which are open to the public under switching rates, to which we have the advantage of the Lowrey basis from Pullman. Where we would have the advantage over Chicago Heights is if the $1.05 per ton rate becomes effective from that point. Pullman is not receiving any different treatment than any other point within the Chicago Switching District but we have higher freight charges because located on a line involving movement over 2, 3 or 4 lines to the Chicago Switching District. (Tr. 697.)

Mr. Shank: I move that Mr. Councill's testimony as to use his company makes of tile manufactured at Pullman be stricken from the record.

Chairman Campbell: Objection over-ruled.

Cross-examination.

By Mr. Shank:

We have no deliveries on the Pullman railroad, no tile being shipped to that railroad. I do not know whether it has team tracks. We never use them. (Tr. 698.)

Chairman Campbell: As I understand, this witness is not complaining of the Pullman rate, but is here to point out the discrimination which exists between Chicago Heights [fol. 700] and Hobart and with that understanding his testimony was received but not for the purpose of attacking the Pullman rate; the Hobart rate is not involved except as its relationship to the Chicago Heights rate. (Tr. 700.)

Mr. McElroy: Mr. Councill, do you remember at the trial of the case in May, 1925 you testified as follows (Tr. 701):

"We operated at Pullman under certain leased rights which will probably be terminated within the next year by the Harbor Commission. Pulllman will then cease to be a factor within the Chicago district, as there will be no plant there. Therefore, we do not concern ourselves with the adjustment of freight rates from Pullman. We are not making any requests for any change in the rates from Pullman to Chicago."

The Witness: The plant at Pullman originally dredged its clay from Lake Calumet. Owing to certain Harbor improvements contemplated, the city authorities have withheld license which was granted from year to year for the dredging of that clay and we have been compelled to purchase a steam shovel and dredge our clay from the bank of the Lake on our own property to our Kilns. This supply of clay is very limited (Tr. 702-703) and we expect when the Calumet District improvement project goes ahead, our plant will be eliminated from the district. We did not admit the reasonableness of the rates from Hobart to Chicago. (Tr. 704.) Hobart is 9 miles from Clark Junction, the end of the switching limits which is the Pennsylvania's first assembling or classification yards on shipments to Chicago. (Tr. 704.)

Mr. Cardy: Mr. Councill, after the car gets to Clark Junction, 9 miles from Hobart, does it pass through the city of Gary. (Tr. 705.)

Mr. Davis: That is objected to as not an issue in this case.

[fol. 701] Chairman Campbell: The objection is sustained. (Tr. 706.)

J. W. Brown, in behalf of intervenors, was sworn and testified as follows:

Direct examination.

By Mr. Keene:

Am Western traffic representative of the Graselli Chemical Co., of Chicago, Illinois and have been for the past 5 years. 3 years prior to that, I was traffic manager for Roger, Brown Importing Co., and prior thereto, was em-

ployed in the traffic department of the Union Pacific and the Fort Dodge, Des Moines & Southern Railroads. The Graselli Co., is an Ohio Corporation with its principal office at Cleveland, Ohio, (Tr. 707) engaged in the manufacture and sale of chemicals, explosives, acids and other commodities, with plants at various points in the United States, with one at Graselli, Indiana, in the Chicago Switching District, at which various chemicals and acids are manufactured. It is on the Indiana Harbor Belt Railway, Baltimore & Ohio Chicago Terminal, Elgin, Joliet & Eastern, Pennsylvania, and Wabash Railroads. Plant switching is performed by the Indiana Harbor Belt for account of other lines reaching the plant under an agreement between them. From the Graselli Plant to points within the Chicago District, we make carload shipments of sulphuric and muriatic acids in tank cars and in carboys; nitric and miscellaneous acid in box cars; numerous other chemical products and scrap iron, cinders and empty bags. (Tr. 708.) We receive in car loads at the plant from points within the district lubricating oil, anthracite screenings, lumber and box shooks, ammonia, niter cake, zinc; skimmings, lead, steel, wheels, tie plates, barrels and empty carboys, cases and drums. (Tr. 708.) Excepting sulphuric and muriatic acids in tank cars, all these commodities move on the Lowrey switching rate of 2½¢ for 1 and 2 line hauls, 3½¢ [fol. 702] for 3 lines, the latter being ½¢ higher than the Lowrey basis. A rate of 2¢ per 100 pounds voluntarily established by the Indiana Harbor Belt and Baltimore & Ohio Chicago Terminal, applies on sulphuric and muriatic acid in tank cars single line hauls. (Tr. 709.)

We expect to justify the present rates and particularly the 2¢ rate single line hauls on sulphuric and muriatic acid in tank cars; as to other commodities, most of our shipments from Graselli go to our Chicago warehouse for truck distribution. If rates to our Chicago warehouse are increased, we will undoubtedly close it and truck direct from Graselli to the consumers in Chicago. (Tr. 709.) My figures as to shipments were originally made for the first 10 months of 1927 to be ready for the hearing in this proce-ding assigned on January 11, 1928. Our principal interest is in sulphuric acid in tank cars, as we ship but few tanks of muriatic acid though it takes the 2¢ rate. Sulphuric tank shipments move for relatively short hauls over

the Elgin, Joliet & Eastern, Baltimore & Ohio Chicago Terminal, and the Indiana Harbor Belt railroads. (Tr. 710.) Via those lines, the first 10 months of 1927, we shipped 515 cars to points within the Chicago switching district, involving single line hauls only. Average weight 112,491 pounds, average revenue, $22.81 per car, or $3.46 per car mile average haul 6.59 miles. The average mileage is based on 7 cars handled via the Elgin, Joliet & Eastern, actual route 115 cars via Baltimore & Ohio Chicago Terminal, all moving to Standard Oil Company at Whiting; and 393 cars via Indiana Harbor Belt for which mileages were shown in its tariff I. C. C. 706 and in its circular revised December 1, 1924 which shows mileages not contained in the committee tariffs. These mileages were confirmed by the operating department of the Indiana Harbor Belt. All were figured by the exact route of movement and through [fol. 703] yards via which cars were handled. Most of the mileage was figured from our Graselli plant to Gibson, from Gibson back to our plant and from plant to destination which involved a back haul of 2.16 miles though we have handled cars direct to industries on the Indiana Harbor Belt located North of us, without the back haul. (Tr. 711.) Shipments of sulphuric acid customarily load heavier than 112,490 in tank cars as it weights from 14½ to 15.6 pounds per gallon. The gallon weights on other liquids range from 7.2 pounds per gallon to 11.7 pounds. The latter including the syrups. (Tr. 712-713.) The average weight of the 115 tank cars of sulphuric acid via Baltimore & Ohio Chicago Terminal was 152,417 pounds, revenue $30.48 per car. Petroleum weighs 6.6 pounds per gallon. The American Tank line owned and operated by our company furnishes the tank car equipment moving sulphuric and muriatic acids. It has 672 tank cars with an investment of $1,096,793.76 as of January 1, 1927 with maintenance and operating expenses including overhead of 6½¢ per car mile in 1926 and 8.1¢ in 1927. (Tr. 714.) On line haul shipments, carriers pay us 1½¢ per car mile for furnishing this private equipment but on shipments moving from Graselli to points within the switching district, we receive no allowance except from the Indiana Harbor Belt on certain movements at the 1½¢ car mile rate which is grossly inadequate because of the short haul within the district. The furnishing of these tank cars releives the carriers of that invest-

ment and expenses of maintaining them; while as to many other commodities shipped in tank cars, the railroads provide them. (Tr. 714-715.) If we received mileage allowances from all lines, it would amount to 21¢ on the average round trip haul in the district. (Tr. 715.) Sulphuric acid is a low grade commodity loading heavier and not susceptable to loss and damage in tank car shipments. Its [fol. 704] value ranges from $11.50 per ton for 60 degree to $15.50 for 66 degree and $18.50 for fuming acid, F. O. B. works in tank cars. 60 degree usually goes to fertilizer works, iron and steel plants. The 66 degree and fuming acids are used largely by oil refineries. Between January 1, 1926 and December 31, 1927, we did not file a loss and damage claim on sulphuric acid shipped in tank cars moving to the Chicago Switching District. (Tr. 716.) In International Corporation Commission vs. Louisville and Nashville Railroad, 22 I. C. C. 488, the Commission recognized sulphuric acid as a low grade raw material entitled to lower rates than manufactured fertilizer; and in Cannon Manufacturing Co., vs. Director General, 64 I. C. C., 183, the Commission prescribed from Virginia cities to Kanapolis, North Carolina, a rate of $3.10 per net ton. (Tr. 718.) And in Consolidated Southwestern case 123, I. C. C., 203, but two commodities were given lower rates than sulphuric acid in tank cars. (Tr. 718.) In the carriers cost study, sulphuric acid is classified in commodity group 66, Chemicals and explosives. Page 2 of Exhibit 7 shows alleged single line cost of group 66 commodities based on 149 cars moved. Figures furnished by the carrier cost committee show 72 cars aggregate weight 8,422,083 pounds for sulphuric acid, 65 moving in private tank cars and 7 in carrier box cars. The box cars loads weighed 321,353 pounds and the 65 private tank car loads weighed 8,100,730 pounds. In analyzing the $19.03 per car cost shown in the cost study for group 66, single line haul, we have no way of checking the item of 73¢ per car clerical cost and $14.28 per car switching cost, but in I. & S. 1854, 83 I. C. C., 432, the average switching cost within the Chicago Switching District of sulphuric acid was shown by the Indiana Harbor Belt to [fol. 705] be $2.58 per car at the General Chemical Co. Plant and $2.47 at the Grasseli Plant during January to May, 1923 inclusive. The same witness estimated switching costs for both terminal movements from the General

Chemical Co., to American Maize Co., at $4.33 per car and from Graselli to Swift & Co., at $4.94. (Tr. 719.) This carrier witness said that haulage was the least important element of expense, the principal items being terminal expenses at each end. The Indiana Harbor Belt is the principal single line carrier of sulphuric acid within the Chicago Switching District. Of the 72 cars of sulphuric acid included in the total of 149 shown in group 66 of the cost study, Exhibit 7, 53 moved over that line, 9 over Elgin, Joliet & Eastern Railroad, 9 over the Baltimore & Ohio Chicago Terminal and one over the Pennsylvania. The item $4.02 per car for car detention cost shown on page 2 of Exhibit 7 is not proper. We provide the cars and bear the expenses of maintenance and operation and the detention of these is an expense to the shipper and not the railroad. Sauer's Exhibit 3 shows average maintenance cost of freight cars of 9 representative lines during 1926, as 64.352¢ per serviceable car day, not including taxes, overhead and investment. That charge may be proper in combining cost of commodities generally but cannot be charged to sulphuric acid in tank cars which the shippers themselves bear. (Tr. 720.) The 2¢ rate on sulphuric and muriatic acid in tank cars to the Chicago District has been effective via Baltimore & Ohio Chicago Terminal since December 6, 1921, per its tariff I. C. C., 243. Prior to December 2, 1923, the Indiana Harbor Belt published 2¢ per 100 pounds single line rate on sulphuric acid in tank cars and 2½¢ and $5.85 per car of 60,000 pounds, plus 12½¢ per net ton for weight in excess of 60,000 pounds and in Chicago Switching District case 83, I. C. C., 432, the Commission permitted the [fol. 706] Indiana Harbor Belt to publish a uniform rate of 2½¢ per 100 pounds.

Chairman Campbell: We will adjourn at this time until 9:30 tomorrow morning, May 19, 1928 at 9:30 o'clock. (Tr. 721.)

Hearing reconvened at Chicago, Illinois, May 19, 1928, at 9:30 A. M.

H. W. Robertson, called in behalf of complainants, was duly sworn and testified as follows:

Direct examination.

By Mr. Walter:

Am assistant traffic manager of the Sinclair Refining Company, with office in New York City. Am familiar with the switching situation at Chicago; for ten years prior to March, 1920, represented Illinois Central Railroad in Chicago, and attended all meetings of Chicago Switching Committee. (Tr. 723.) I cannot say that I participated at the beginning in the development of the Lowrey basis for switching, as in the beginning the big switching lines tried to freeze out the Illinois Central Railroad. (Tr. 724.) In this case I am appearing for Sinclair Refining Company, Standard Oil Company of Indiana, and Roxanna Petroleum Corporation (Tr. 724), and my evidence will deal primarily with the oil situation. The plants of these companies are located as follows: Standard Oil Company at Whiting, Indiana, on Baltimore & Ohio Chicago Terminal, Indiana Harbor Belt, New York Central, Pennsylvania, and Elgin, Joliet & Eastern; Sinclair Refining Company at East Chicago, on all above carriers except New York Central; Roxanna Petroleum Corporation at East Chicago, served only by indiana Harbor Belt Railway. (Tr. 724-725.) All these refineries are on Indiana Harbor Government Canal, which is open, so that oil may move by water to them.

[fol. 707] All refineries ship petroleum products to themselves and customers in the Chicago switching district, 90 per cent thereof being privately owned tank cars. (Tr. 725.) In a 12-months' period for the Standard Oil Company and Sinclair Refining Company, and an eight-months' period for Roxanna Petroleum Company, 40,769 cars of petroleum or its products moved to the Chicago switching district; 14,836 were single-line hauls, 25,591 two-line hauls and 442 three-line hauls. Based on suspended rates the increased revenues on those shipments would be $219,318.00. If the increases become effective each of these refineries would have to extend the operations of the tank wagon. Petroleum oils in bulk are shipped to wholesale distributing plants and actual distribution is made therefrom by tank wagon. We have many wholesale distributing plants to which we ship in tank cars and then move it in tank wagons. (Tr. 726.) We would have to lessen the

number of bulk station shipments and handle more in tank wagons. Because of congestion we might not do that entirely, but would ship by tank wagon from East Chicago, resulting in the abandonment of our Indiana Harbor station. (Tr. 726.) There is a possible movement by tank barge. Our company did not locate altogether on water in the Chicago district. We have plants in Chicago reached by water, which barged supplies from the refinery at Whiting during the war, and it can be done again. (Tr. 727.)

The Texas Company refinery at Lockport, Illinois, barges its oils therefrom via drainage canal and Chicago River to deliveries in Chicago. Having knowledge of barge and towing costs in New York, Philadelphia, Norfolk, Charleston, New Orleans and Houston harbors, would say barge expense from Lockport to deliveries in Chicago district would be less than 2½ cents per hundred pounds. (Tr. 727.)

The Roxanna refinery is not on the canal, but has prop-
[fol. 708] erty thereon which it is improving with dock facilities and it will pipe from its refinery to the dock. This company is only really started here. It has 4 plants, which would be few compared to what they may have. If these rates are increased the Roxanna Company will undoubtedly put plants on the water. Our company could not do that now without a very heavy financial loss in dismantling the distributing plants we now have. Our refinery, as well as all three refineries, are located where we can use water.

Undoubtedly there are a number of customers taking tank car lots of our products who could be served by water, and those not having dock facilities could be reached at very little cost by an unloading pipe, which is all that is required in unloading oils from a barge. (Tr. 728.) On part of our shipments the Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt make an allowance of 1½ cents per mile on tank cars where deliveries are made at Blue Island and west. Deliveries east thereof in Illinois or in Calumet district no allowance is made. About the closest delivery is the Chicago & Eastern Illinois, and they allow 9 miles. The largest mileage allowed is 35 miles, which is to Norpaul, and round trip is 70 miles at 1½ cents, which would take from 7 to 10 days. (Tr. 729.)

The railroads should not charge car detention on privately-owned cars, as there is no expense to the railroad as there is on railroad-owned equipment. (Tr. 730.) Prac-

tically 100 per cent of tank cars return to the refineries empty. The shipper routes the loaded car as well as the empty. There is outbound line movement from these refineries to points outside the district that greatly exceed line-haul movements to the Chicago district. Our records show that in the Chicago district we never have a car for delivery therein on any trunk line, road-haul line, but what [fol. 709] it gets more than one car for the road-haul delivery; and when cars are returned there is hardly a case where loads are not brought in with empties in the same train. (Tr. 731.) Checking 19,636 of our cars we found that carriers hauled 13,025 to a yard and then back again, on which they figure excess mileage of 42,501 miles, or an average of 3.26 miles per car. (Tr. 732.)

Cross-examination.

By Mr. Davis:

It is not at all times possible, when a train passes a switch, to break it up if it has a car or two for our plant, but it is done sometimes. (Tr. 732.) In some of these costs I know the details as to train, the make-up yard before putting them in the train, and the switch into the plant before they go to the next yard. This could be done by placing the cars either on the head or the rear of the train and leaving the main body of the train on the track and then switching our cars as they pass the switch.

We do not contend if these rates are increased that all refineries will move out of the city, and made no such representation. We will not move out. (Tr. 733.) We will still deliver here and have the same gallonage distribution, but with another method. The mileage allowance being less than 10 cents per car per day, does not influence our routing. We want the car returned as soon as possible. We have had our tank cars held in the Chicago district 14 days. The 1½ cent allowance per mile is not of any particular advantage to us. It does not anywhere near pay maintenance cost; but we desire the continuance of the allowance because in all it amounts to about $2.00 per day. (Tr. 734.) There would be no increase in the price of gasoline if the proposed rates go into effect. (Tr. 735.)

[fol. 710] Cross-examination.

By Mr. Orcutt:

All oil, including gasoline, coming to bulk stations by tank cars is distributed therefrom by tank wagon. (Tr. 736.) I said if the rates increased we would have to eliminate some delivery stations and locate on water, making longer deliveries by tank wagon, which would increase tank wagon deliveries more than today. The percentage of that increase I cannot give. We deliver through the Calumet district today direct from the refinery by tank wagon. (Tr. 736.) Have been with Sinclair Refining Company since 1920, three years in Chicago and five in New York. Was in Chicago in 1920. The 40 per cent increase in rates of August 26, 1920, did not materially change the ratio of tank wagon deliveries as compared by rail, as such ratio existed for the year prior to the increase; but the proposed increases would make such change because we have gotten about the limit now. (Tr. 737.)

Redirect examination.

By Mr. Walter:

All highway conditions have greatly improved since 1920, including methods of handling, trucking, etc. With very few exceptions all petroleum oils, including gasoline, move to the Chicago district in 10,000-gallon tank cars, with stated weight of 6.6 pounds per gallon, making 66,000 pounds upon which we pay freight. The stated weight is about .3 pounds per gallon above actual weight. (Tr. 738.)

Recross-examination.

By Mr. Davis:

The estimated weight of the 6.6 pounds per gallon applies in Central Freight Association and trunk line territories and practically throughout the United States except in some states where less. This weight includes some commodities weighing more than 6.6 pounds per gallon in offi-
[fol. 711] cial territory; but on the average the estimated weight would exceed actual weight of petroleum products shipped. (Tr. 739.)

E. A. MUNSON, duly sworn, testified as follows:

Direct examination.

By Mr. Knowlton:

Have been in traffic work for the last twenty years. Am traffic manager of American Tar Products Company. Prior to 1925 I was located in Chicago and am generally familiar with the Chicago switching district. (Tr. 740.) My company moves the bulk of its material in liquid form and therefore in tank cars to a great extent, which being used for a special purpose, railroads do not ordinarily supply to the shipper. My company supplies its own tank cars of 10,000-gallon capacity, which it loads to capacity. Certain shipments require insulated cars. Our business does not require this more expensive type, which is to the advantage of carriers, because the insulated type is more expensive to maintain. My company owns over 300 tank cars, and we lease many others. We must determine quite accurately our tank car requirements in order to keep the cars continuously in service, and we have reached a greater car efficiency than the average railroad. (Tr. 741.) The insulated car rental was $45.00 per month or $1.50 per day. The non-insulated, $37.50 per month on a long-term lease, and if carriers will lease appropriate cars at less figures, we would be interested in the proposition.

Our position in this case differs from that of the usual shipper because we ask allowance of the cost of the equipment used in the switching service. We get 1½ cents per mile for tank cars, which does not equal maintenance cost, but is of assistance. The switching service does not give much mileage, and for 10 miles our average haul to the Chicago district yields 15 cents for the use of a car in service several days, which is absurd to consider as compensa-
[fol. 712] tion. (Tr. 742.) We ask in this case to be compensated on a fair basis, Tar is not shown in the cost studies. Our investigation shows average time consumed in round trip movement of our tank cars in the Chicago district is 4.61 days, to which should be added reasonable time for loading or unloading, and a fair allowance for tank car use in switching district would be $1.25 per day. The cost studies are based on the cost of supplying equipment generally. Actual cost on cars owned by ourselves

or others would exceed $1.25 per day, but this suggestion is to give carriers an opportunity to supply us with tank cars if they desire to do so at less figures. I do not claim any one method of relief is the only one. My claim is that the cost study is imperfect and incorrect unless the costs for tank cars furnished by shippers are excluded. It is all wrong from an accounting standpoint and should be corrected. (Tr. 743.)

Car detention is used in Mr. Saur's Ex. 7, showing $4.25 to $5.61, to which is added another factor to cover return on investment, etc. Applied to our shipments, this amounts to more than ½-cent per hundred pounds. Certain special raw material rates are not to be disturbed, which are satisfactory to us and for which we use one movement entirely in Illinois and interplant. The reasons for the establishment of this raw material rate and its maintenance are: First: It was established to prevent our building pipe line. Second: It covers a short one-line haul. Third: It is merely a switch of our equipment, with no allowance. Fourth: It causes no discrimination. (Tr. 744.)

Cross-examination.

By Mr. Davis:

This raw material rate applies to coal tar moving C. & I. W., and we pay $9.00 per car. We have but one plant served by Chicago & Illinois Western and Illinois Central. The $9.00 per car rate applies for a distance of approx- [fol. 713] imately 2 miles. (Tr. 745.) We produce tar and creosote oil, but our principal movement within the Chicago district is coal tar, with which we deal in gallons, worth from 4 to 5 cents per gallon, crude, which we ship within the district. (Tr. 746.) Refined tar used in the district we haul from our plant in tank wagons, which is paving and roofing tar worth approximately 9 cents per gallon, with the same rate as on the crude. (Tr. 747.)

J. T. Forest was recalled as a witness.

Direct examination.

By Mr. Walter:

The $1.50 rate on pig iron by water, previously referred to, includes all dock charges, loading and unloading, at each end of the trip. It is not the only rate at which pig

iron moved last year. A number of boatloads were brought in at 75 cents per ton, which included loading and unloading charges, which applied from both Cleveland and Buffalo. (Tr. 748.) It is the expectation of the leading Lake Erie and Lake Michigan lake lines that this will be a dull season also. Forty thousand or more tons of pig iron were brought into the city of Chicago via water. (Tr. 749.)

Regarding pig iron competition from Alabama in Chicago, the barge and rail rate from Alabama plants to Chicago is $4.18, as compared with $6.01, the all-rail rate per gross ton. As we go to the Southwest the barge and rail rate decreases, while our charges increase. (Tr. 749.) My exception in Ex. No. 23 as to certain cost items, upon investigation shows it was properly taken and which relates to the subject of weighing. Where the commodity is sold by weight cars are weighed both light and empty. Cars loaded with refuse or material of little consequence are weighed loaded and tare weight stenciled on the cars is used. Tank cars are not weighed light except occasionally [fol. 714] for checking purposes, as to whether or not they have been emptied. Tanks return sometimes with some material in them, on account of carelessness at the unloading point or from some accident which prevented complete unloading. (Tr. 750.) If on examination material is found in the car it is reweighed. (Tr. 750.) This does not happen in shipments of light oil, which go to consignees well equipped for handling it and are always completely emptied. Light oil, ammoniacal liquor and coal tar are sold by the gallon, and we have no interest in weight except as related to freight charges. We weigh the cars from time to time for checking purposes, but it is not the rule that a tank car continually in service is weighed every time loaded, and in the exception mentioned the car was not weighed before loading. (Tr. 751.) In checking during the cost study period in August our company, through its yardmaster, actually traced a number of car movements by putting men on the cars, who made 19 trips during the test week. Three of those trips moved via roads not in the cost study or involved duplication of a route, leaving 16 as to which we got accurate account during the entire

movement of each. (Tr. 751.) I mention trips because in instances more than one car was involved. Of the 16 there were 7 where our record of movement with the route sheets of the railroads show application of cost elements not actually involved in the movement. These were the cases presented in my Ex. 23, not to criticise the actual movement, but to show misapplication of the cost elements in the study (Tr. 752); although in some instances it might be said that the actual route was circuitous or the movement dilatory or other reason indicating lack of operating efficiency. (Tr. 752.)

The first movement referred to in Ex. 23 covers pig iron from our blast furnace to National Malleable & Steel [fol. 715] Castings Company at Melrose Park. (Tr. 753.)

The pig iron was loaded in Chicago & Alton car 43,212, which was moved by our own engine from our Federal Furnace plant to Indiana Harbor Belt and placed on track No. 5 at Clayburn Yard at 4:00 P. M., August 8, 1927, where it was classified. Clayburn is shown as South Chicago on the sheet, a very short distance from our furnace plant. (Tr. 753.) The car moved from Clayburn at 6:35 p. m., via Indiana Harbor Belt engine No. 320 with 57 cars, arriving at Calumet City yard at 7:20 p. m., remaining for classification to 2:40 A. M., August 9th when it moved by engine No. 157 with 40 cars, arriving at Blue Island at 3:15 a. m., remained there for classification until 10:50 A. M., and thence was moved by engine 410 with 58 cars arriving at La Grange at 11:50 A. M., and remaining until 12:25 P. M., while deliveries were being made to the Chicago Burlington & Quincy at La Grange. It left La Grange at 12:25 P. M., with 33 cars, arriving at Broadview at 12:40 P. M., and remained until 1:00 P. M., while the Indiana Harbor Belt made deliveries to the Illinois Central Railroad at Broadview, leaving there with 28 cars at 1:00 P. M., and arriving at Bellwood at 1:10 P. M., and held until 1:35 P. M., while delivery was being made to Chicago Great Western Railroad. It left Bellwood at 1:35 P. M., with 18 cars and was spotted at the Melrose Park plant of the National Malleable & Steel Casting Co., at 1:45 P. M., of August 10. (Tr. 755.) The second sheet of the Exhibit shows movement of car of coke from our coke plant to Southern Car Wheel Co., at Hammond which was traced by a man no longer in our employ. Mr. Hall traced the

car and rode with the car of pig iron. (Tr. 755.) We excepted to the classification of the coke car at Burnham, but there are other movements that are not right, a great many that we take exception to. (Tr. 756.)

Chairman Campbell: Let us understand about riding cars. We cannot sit here and listen to every man who has [fol. 716] ridden any of these cars and I am not going to do it.

Mr. Connell: I only asked for one—Mr. Hall.

Commissioner Campbell: Very Well. (Tr. 756-757.)

It might be well on both sides to have the men giving the instructions specifying what they were and stating in a general way how they were carried out. (Tr. 757.)

The Witness (continuing): Well, I gave them myself, that is, I passed them on in a general way to Mr. Calene but to Mr. Hall, they came from Mr. Calene. (Tr. 758.)

With reference to the coke car, there was no classification at Burnham and a great many other items should be omitted, totaling $3.69. (Tr. 759.)

The movement of this coke car was handled by Chicago Short Line engine 28 and taken from the coke plant at 2:30 A. M., August 9, and delivered to Interchange track at 115th St., at 2:50 A. M., and there held until 5:50 P. M., when it was moved by Indiana Harbor Belt engine 315, from the 118th st. yard with 103 cars at 5:50 P. M., August 10th; from 5:50 P. M., to 6:00 P. M., the train was held at 118th St., yard to J. O., block station; from 6:00 to 6:40 P. M., waiting for a block at J. O., station. It was in Calumet classification yard from 7:20 P. M., to 5:35 A. M., August 11th; Indiana Harbor Belt engine 318 moved it from Calumet yard with 61 cars at 5:35 A. M., arriving at Gibson yard at 6:10 A. M., where it remained in classification yard to 10:15 A. M., then leaving Gibson yard with engine 169 with 26 cars it arrived Osborne Yard at 10:35 A. M., remaining in classification there from 10:35 to 2:15 P. M., then moved by Indiana Harbor Belt Engine 169 at 2:15 P. M., and was spotted at Southern Car Wheel works at 2:45 P. M., August 11th.

The man riding this car was instructed to stay with it all the time, but I was not there, of course. He made report [fol. 717] to me that we believe to be correct. (Tr. 760-761.)

The light oil movement was traced by Mr. Hall. 2 tank

cars, C. N. T. X., No. 378 and N. A. T. X., 1343; Belt engine 120 moved these cars from our South Chicago plant and delivered them to Chicago Short Line 7:25 P. M., August 5 and they arrived at Hawthorne 7:45 P. M., the same day. In the fourth case referred to, the cars were followed by Mr. Calelle himself, and cover 19 cars on August 5 from our coke plant to our furnace plant. Chicago Short Line Engine 60 moved these cars loaded with coke from the plant at 12:00 noon, August 5, delivering them to Pennsylvania railroad interchange at 112th St., at 12:30 P. M., August 5, where they remained on interchange track from 12:30 to 3:35 P. M. Pennsylvania Railroad engine No. 8666 moved them at 3:55 P. M., and delivered them at Federal Furnace interchange at 4:30 P. M., when they were taken by our own engine to our plant. There was no classification whatever in this case. It was part of the shuttle movement which I have described in my previous testimony. (Tr. 763.) The fifth case in my Exhibit 23 follows movement of a car of coke from our plant to Douglas Coal Co., at Hawthorne, Car B. R. C. No. 1543 taken from interchange with Chicago Short Line by Belt Engine No. 129, leaving South Chicago at 10:10 P. M. August 4 and delivered at Hawthorne at 3:30 A. M. on August 5. (Tr. 764.)

The 6th case covers 8 cars of coal tar No. B. M. X., 567, 603, 4018, 4021, 4308, 4467, 4744 and 4918 delivered by Chicago Short Line to Belt at 7:00 P. M. August 7th and moved by Belt Engine No. 125, arriving at Hawthorne at 9:05 P. M., August 7.

The last case covered by the exhibit is car of Ammoniacal Liquor No. G. A. T. X., 11680 taken from our plant by Chicago Short Line engine and delivered to Belt at South Chicago moving therefrom Belt Engine No. 128 at 5:30 P. M., arriving at Clearing at 6:30 P. M., August 7th.

[fol. 718] We covered a number of cases besides those in the Exhibit in which we found no evidence of misapplication of cost elements but a great deal of switching service that was far from efficient and expeditious. (Tr. 764.) I could give these for the purpose of showing that by reasonable management, some economies might be effected. There is a large movement of pig iron from Federal Furnace plant to the Interstate Steel plant at South Chicago, running from 6, 10 to 12 cars per day. The distance after reaching Clearing, our South Chicago yard where we de-

liver cars with our own engines is around 5 city blocks. We traced Pennsylvania cars 276,022, 823,250 and 324,525 loaded with pig iron, delivered by our engine to the Pennsylvania railroad on its track No. 5 at Clayburn yard, 4:55 P. M., August 5. (Tr. 765.) At 12:35 P. M., August 6, the Pennsylvania railroad engine No. 8392 picked the cars from track 5, switched the track, and set the cars back on No. 5 track at 1:00 P. M. Pennsylvania Engine 6342 moved the cars from track 5 at 2:30 P. M., and set them on track No. 4; the Pennsylvania engine No. 8666 moved the cars from track No. 4 at 3:45 P. M., August 6, delivering them to Interstate Iron & Steel Co., siding at 4:15 P. M. on August 6, a haul which could be made in 15 minutes. There is no reason justifying such movement or handling. The cars were simply lying around the yard. Perhaps if we had had 12 cars instead of 3, the movement might have been quicker. But with 3 cars, they thought they would wait and see if some more would not turn up. (Tr. 766.)

C. R. CALENE was sworn and testified as follows:

Direct examination.

By Mr. Walter:

Am yard superintendent of By-Products Coke Corp., and have been since 1910, having had 22 years railroad experience. Am familiar with operations in the Chicago Switching District and particularly with the operations ontlined [fol. 719] by Mr. Forest; heard his testimony and concur in what he stated. At the time of the cost study, I issued instructions to the men who rode the cars and rode some myself between the coke and the furnace plants. Other men had the other routes. (Tr. 768.) I instructed them to follow car from point of shipment to point of destination and report every movement of the shipment.

Cross-examination.

By Mr. Davis:

My 22 years railroad experience includes all of it. Have had charge of railroad work at the plant since 1910; had 2 years railroad experience with the New York Central

lines before that as a switchman in South Chicago and was helper and conductor on the switch engine. (Tr. 769-770.)

H. G. BROWN, called and sworn, testified as follows.

Direct examination.

By Mr. Miller:

Am traffic manager of the Illinois Brick Co., and have been engaged in traffic work about 23 years, part of that time with the railroads. (Tr. 770.) The Lowrey agreement, as originally proposed did not cover increase in the rate on common brick, which before the agreement, was 1¢. There was not an all commodity basis at the time. The rates varied on single line hauls, but in the first Lowrey tariff, they were put in on the first all commodity basis of 1½¢, subsequently reduced to 1¼¢, which remained effective until general order 28, June 25, 1918. Prior to general order 28, the rate on other commodities on the Lowrey tariff in the district single line hauls was 1½¢. (Tr. 771.)

Under general order 28, an arbitrary of 2¢ was added to the brick rates, making 3½¢ single line hauls, subsequently the rate was made at 1½¢ becoming effective in November, 1918. This rate continued until the general increase and [fol. 720] then became 2½¢ with some variations in some of the different tariffs. In the general decrease, common brick rate was not reduced, that is, the 10% decrease did not apply to common brick because commodity rates of 2½¢ or less were not given the 10% reduction which in effect made the brick rate the same as the all commodity basis of 2½¢ as the reduction brought all 3¢ rates down to 2½¢ again; which has applied with few exceptions until the present proposed increase. (Tr. 772.) The Illinois Brick Company manufactures and sells common brick only, with 10 operating plants, 6 within the Chicago district and 4 just outside. Within the district, we have 2 plants at Weber on the Chicago & Northwestern, 3 plants at Blue Island, one on the Baltimore & Ohio Chicago Terminal at 123rd St., one on the Rock Island at 119th St., and one on the Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt jointly at 138th St. We have one on Indiana Harbor Belt at Dolton practically 139th St. Out-

side the district, we have one on the Chicago, Milwaukee & St. Paul at Northbrook and 2 on the Pennsylvania at Bernice and one on the Illinois Central at Manteno, all points in Illinois. About 80% of our brick is sold within the Chicago Switching District. (Tr. 773.) It must be sold there because it is a low grade commodity, low priced and with line haul rates comparatively high, our distribution is restricted to surrounding territory. We have a basis of 80% of the all brick commodity rates applicable to all territory within 150 miles, beyond that, we pay the general brick rate for line haul movement, which does not apply to a switching movement. We have a very large truck delivery within the Chicago district. From 1919, truck deliveries have increased from 8.2% that year until 1927 we delivered 36% by truck. There have been abrupt increases in truck delivery at times when rates have been changed. (Tr. 774.) Prior to the 1920 increase, our truck [fol. 721] deliveries were 14.9%, but with that increase, they jumped to 25.9% for the balance of the year after the increased rate went in. That has steadily increased until we now have 36% truck deliveries. The abrupt increase in rates was about the middle of 1920.

Q. Mr. Brown, have you estimated the effect the proposed increase of rates on common bricks would have on your trucking deliveries in the Chicago District.

Mr. Orcott: Objected to as being merely conjecture.

Chairman Campbell: I will let him answer the question.

The Witness (continuing): Our trucking at the present time is based on zones. Our zone mileage is practically a 10¢ increase per mile. Increases in freight rates of 20¢ per Ton increases our zoning by at least 2 miles. That rate increase will extend the present truck zone by at least two miles and really more than that in order to meet competition of our competitors where their situation demands truck deliveries. The Burke & Brisk people on the Western side move practically all of their output by truck and are in very keen competition with us. They are two concerns. (Tr. 776.)

Exhibit No. 50 prepared by me shows shipments by our company of common brick for months of June, September and October of 1926, consisting of 3 sheets offered and received in evidence marked, "Exhibit 50, Witness Brown." (Tr. 777.)

I prepared exhibits showing comparison between movement of brick during these 3 months with movement of common brick during test period August 4th to 10th, 1927 for 1, 2 and 3 line hauls which were offered in evidence as Exhibits 51, 52 and 53. Exhibit 51 shows one line hauls consisting of 3 pages, (Tr. 777.) Exhibit 52 consists of 2 pages and Exhibit 53 a single sheet, which were received in evidence, marked "Exhibits 51, 52 and 53, Witness Brown." (Tr. 778.)

[fol. 722] In June, September and October of 1926 we shipped 1650 cars of common brick, single-line, an average of 550 cars per month, shown in Ex. 50. For the test period August 4 to 10, 1927, 102 cars shown by Ex. 51. During the month of the test period we had 468 cars and 102 for the 7-day test period. Our average per month for the 3 months shown in Ex. 50 was 550 cars, and for the year 1926 was 557 cars per month for one-line hauls. (Tr. 778.) The test period week was not representative because it shows a lower ratio than the other months. The average loading for the test period was 69,729 pounds, while for the 3-months' period of 1926 was 75,985 pounds (Tr. 779), which was fairly representative of the average for 1926.

Our Ex. 50 shows variation in average weight shown. At yard 17 on the Rock Island we received a large proportion of 80,000-pound capacity cars, average loading for June being 82,857 pounds; for September, 84,667 pounds, and for October, 82,545 pounds. But at plant 22 on the Baltimore & Ohio Terminal, with less proportion of 80,000-pound to the smaller 60,000-pound cars, our average loading was 77,984 pounds for June, 73,151 pounds for September and 71,092 pounds for October. This situation applied at yard 42 also. (Tr. 780.) The cars furnished by the Baltimore & Ohio Chicago Terminal are practically all 60,000-pound cars, which we load 110 per cent of capacity. If that road furnished 80,000-pound or 100,000-pound capacity cars our average would be materially higher, because we load 110 per cent of capacity.

At Northbrook plant No. 1 we receive a large proportion of 80,000-pound cars from the Chicago, Milwaukee & St. Paul, and our average loading for June, 1926, was 88,914, September 89,205, and for October 88,423; with average revenues per car for June, $22.22; September, $22.30, and October, $22.10, moving via that railroad. (Tr. 781.) There

were 268 Northbrook cars for June, 73 for September and [fol. 723] 104 for October, moving to the switching district.

The same situation obtains at Berenice on the Pennsylvania Railroad, but shows much higher average due to large number of 100,000-pound cars furnished. At that point average loading in June was 95,709 pounds, September 95,980, and October 95,962, yielding revenues $23.93 for June, $24.00 for September and $23.95 for October per car to the Pennsylvania. (Tr. 782.) We take whatever equipment the Baltimore & Ohio Chicago Terminal furnishes, and which consists of old cars assigned to it by the Baltimore & Ohio, much of which are in disrepair and cannot be used in any other service except brick. There is a tendency to increase car capacity and the carriers are building more 80,000-pound and 100,000-pound capacity cars. (Tr. 783.) As the smaller cars disappear from service our average loading and the average revenue will naturally increase. Our loading is only limited by the size of the cars we receive, and if the higher capacity cars are given it will put us in a position to furnish revenue as high or higher than from any other commodity shown in Ex. No. 11, with the possible exception of pig iron, iron and steel, and cement. With the exception of these brick would yield as high or higher revenue than any other commodity. (Tr. 784.) There are very few loss and damage claims on common brick. We have not filed one in ten years. No weighing is required of common brick because they are handled on the agreed weight basis. The bulk of cars furnished to us for common brick could not be used for any other purpose. (Tr. 785.) They have leaky roofs, holes in the sides and bottoms which many times require planking the floors to permit their use for loading. (Tr. 786.) As to charging car detention against cost of handling brick, most of the equipment in the brick service has prob- [fol. 724] ably been retired so far as carrying on the equipment register is concerned. We found several cars we used that had been in use for twenty years.

I prepared exhibit as to the matter of car detention on common brick. (Said exhibit was offered and received in evidence and marked "Ex. No. 54, Witness Brown.") (Tr. 786.) In that statement I used the cars shown in my Ex. No. 51 under September, 1926, except a few to destination points as to which I could not secure complete data. (Tr.

786.) The study made by me covers 409 cars. We keep an elaborate system of records on the cars, the car report from our plants showing time cars are ordered and when placed for loading, and when billed out. At our divisions where cars are unloaded we have a like report, showing time placed for unloading and time when released, and have used those reports in making this statement. On the 409 cars covered the total detention was 2215 days, an average of 5.27 days. In this average .14 represents demurrage we paid at unloading points. The last column shows amount of demurrage paid at each unloading division. (Tr. 787.)

The carriers show average car detention cost $4.17, representing approximately 6½ days. My check shows that is too high. In connection with the cost study my Ex. 54 shows 41 cars moved via Chicago & North Western from Weber to Mayfair, a distance of 5.1 miles, which consumed 3.51 days in movement under load; that is, from the time they were loaded and released or picked up from our yard until placed for unloading at Mayfair. In the study it appears that the time consumed in transit is in all cases higher than the time consumed in loading and unloading. (Tr. 788.) It seems to me use of car detention in determining cost, or arriving at repair cost, establishes somewhat higher per car charge than is proper or that should be applied [fol. 723] against switching movement. In the exhibit I have used one day from time of placement on all cars, as that is from time we place the order for the empty until it is placed at our plant, but in many instances 1 day has not elapsed because cars are ordered in the afternoon and placed for loading before 11 o'clock the next day, and my figure of 5.27 days is rather high as far as actual elapsed time is concerned. (Tr. 789.)

At yard 22 our average movement from that yard runs over 30 cars per day, which move practically to 8 destinations in cuts anywhere from 3 to 8 to each destination, but moving from the plant as high as 30 cars at a time. In billing these cars we show those for the same destination together, which avoids excess switching. Those for each destination are assigned together in the train and do not require switching after they are pulled from the yard. That is the general rule, though there may be a few exceptions. (Tr. 790.)

I heard the testimony of Mr. Womer regarding charges on a per-car basis for switching movements. (Tr. 790.) As far as brick is concerned, the per-car basis would not tend to increase our cost to a great extent, provided proper cars were furnished, that is, higher capacity cars. With higher capacity cars we would not object to a per-car charge. We are satisfied with the present basis, however, on common brick, and believe it should be retained in justice to Chicago switching interests. (Tr. 791.)

We own in the switching district 26,389 feet of plant track built at an approximate cost of $143,000.00, which we keep in repair. The carriers in their cost study made no allowance for the application of their operating ratio over those tracks, as compared with railroad owned tracks.

With reference to circuitous routing of freight in the Chicago district, I see no difference between that than [fol. 726] there is in circuitous routing on main-line hauls. On a short-line route between two points costs should be based on that short-line movement. Competitive carriers desiring that business requiring loss of 80 to 100 miles should not penalize shippers with that additional expense in making up cost figures. (Tr. 792.) Circuitous movements of these cars result in most instances through solicitation of the carriers. If they want to force us to move all business via short lines we can do that.

Cross-examination.

By Mr. Davis:

As to circuitous routes I see no difference between the switching business and road-haul business, so far as established costs go. (Tr. 793.) There are mileages in road-haul comparable with mileages in the switching district, but a competitive situation exists in the Chicago switching district that is not in road-haul business. Your road-haul business is not based on mileage, in most cases, but based on some competitive situation also. The two should not be put practically upon the same basis. The cars moving during the test period weighed less than for the greater period shown by my exhibit. There is no 7 days in the year that would show the conditions. There would be variations. There would be variations in comparing figures for one year with another. (Tr. 794.) Demurrage begins

after the first 7 A. M. following the placing of the car, and released when we give notice to the carrier, and it is not subject to demurrage following the day on which we give release.

Ex. 54 shows actual placement of the car and its release in all cases. (Tr. 795.) The car would not be detained before we gave an order to place it. We give an order for cars and the carrier gets the cars some place, and the time elapsed between the order and placing would be shown, but in this case where every order is shown there is not [fol. 727] one where the car was not placed within the 24 hours shown on the exhibit. (Tr. 796.) We usually order cars at 3 P. M., and when so ordered they are placed the next morning, and in every car shown there has been no delay. You must have that car some place to give it to us, and I could not determine how long you detain it anticipating our loading. I did not take into account, after release of the car, the time it might remain with the carriers before given to someone else. (Tr. 797.)

On page 2 of Ex. 52 the shipments October, 1926, Blue Island to Pullman Railroad, should be shown as moving to Chicago, West Pullman & Southern. In other respects it is correct. (Tr. 798-799.)

CHARLES A. SHANK sworn and testified as follows:

Direct examination:

Am traffic manager of National Brick Company, Chicago, Illinois, and have been since its organization in 1905, having 5 plants, 3 in the Chicago switching district. I adopt the testimony of Mr. Brown given in behalf of the Illinois Brick Company so far as it applies to operations of plants, movement, uses and sizes of cars, and the disposition of brick, because there is no difference in those matters. We have a plant at Weber on the Chicago & North Western, where the Illinois Brick Company has 2 plants. We have 2 plants located in Chicago Heights, Illinois. Mr. Brown's testimony as to weighing and as to no claims applies equally to the National Brick Company as in his own business. (Tr. 800.) We do not subscribe to Mr. Brown's idea as to making a cost study for switching movement

predicated upon a road-haul movement. We think they should not be connected in any way. We do not oppose the [fol. 728] rates of 3, 3½ and 4 cents under suspension, regardless of the fact that common brick is a low-grade commodity on any comparison with other commodities in the district. Under the original Lowrey agreement common brick were exempt from the application of the one-line rate of 1½ cents. We are willing to surrender that differential if the Lowrey agreement within the confines described therein is made effective on all commodities moving within that district, at the same rate for all, with the exception of factory refuse, which is without commercial value. (Tr. 801.) Zoning of any part of the switching district today would be a hardship upon industries located as they were when no thought of zoning existed. Penalizing investments made under assurances that we would be protected in a rate basis as good as our competitors might enjoy within the district would be unfair. We located at Chicago Heights in 1905 and began operating our plant in 1906 under a $5.50 rate applied to a 60,000-pound minimum, excess in proportion.

At that time the district rate was 1 cent. But at the time there were many switching rates on other commodities in this case having rates lower than the 1-cent rate on common brick. Our rate was made because of the willingness to give the carrier a minimum weight of marked-capacity car. (Tr. 802.) The justification of a differential for common brick versus other commodities of that kind we feel equally exists today for the same logical reasons; giving to the carriers the same benefit from handling our product at the lesser rate today, that they received from handling it at the lesser rate in 1911 and thereafter. (Tr. 802.) In fixing a real Lowrey agreement in this case, there should not be a single exception as to any commodity. The same rate should apply on all commodities excepting, however, factory refuse without commercial value. Factory refuse is something that has to be wasted. It cannot be sold for any purpose and would interfere with the operation if left at the plant. A number of commodities today on single [fol. 729] line hauls move as factory refuse that have commercial value and enjoy lower rates. That is unfair to the balance of commodities in the district paying higher rates. If the carriers would furnish open top cars such as fur-

nished for crushed stone, sand, gravel and soft coal which are of much larger capacity than box cars, or if cars of that capacity were furnished at our plants with an opening at end or side, permitting movement on car floor with a wheel barrow, our average loading would be as high as any of the commodities shown in Mr. Haynes Exhibit 16, page 8. Within my knowledge, prior to the building of iron body cars, a wooden open top, becoming unsuitable for road haul purposes would be furnished us by carriers with an opening cut in the side, permitting us to run a wheel barrow on the floor of the car for common brick loading which would run for some years only in switching service in the Chicago District. We could use cars today not serviceable for sand, gravel, crushed stone and coal because, worn out as to those commodities, they would be serviceable for brick. The brick rate is 2½¢, compared with the 2¢ rate on sand, gravel and crushed stone for single lines. On our rate, with the same size car, we would show much higher earnings per car, per car mile, for the same mileage than those commodities return. (Tr. 804.) We have a $750,000 investment at Chicago Heights and to impair our earning power on that with other competitors not having that investment when we located on the low rate we did, would be unfair morally, if not technically and really illegal. We have 205 acres of land, making the life of the plant about 75 years. We are in favor of a basis for the switching district of Chicago of no higher than 3¢, 3½¢ and 4¢; (Tr. 805.) and believed it was acceptable to the carriers and to many shippers as a means for disposing for the time, the question of the proper level rates to apply on switching in the Chicago District. (Tr. 805.)

[fol. 730] Cross-examination.

By Mr. Walter:

I have no figures showing the truck movement of our product, but feel that the percentage to production runs higher than that of the Illinois Brick Company. (Tr. 806.) An increase in rates would not put more of our products on trucks. We are the only common brick manufacturers in Chicago or the Chicago district favoring the basis of 3¢, 3½¢ and 4¢. We feel we can stand those increases and if we can with our 5 plants, we feel our large competitor

who determines the price in this territory can also stand it with its 10 plants. (Tr. 807.)

Cross-examination.

By Mr. Miller:

Our plant at Weber is the only one in the Chicago district as the district is now constituted. For two years, there was not a car produced at our plant at Weber and that was true of your own brick there. You ship brick from Blue Island on a two line haul to Weber station to unload there to take care of the demand for your product in the Weber district. I cannot say the number of cars shipped by rail from Weber for the past 2 years to the Chicago Switching District. (Tr. 808.) We are today shipping an average of 20 cars per day from our Chicago Heights Yard to the Chicago Switching District and from our Weber plant we are shipping 3, 4 and 5 cars per day into the district. There is no difference between their yard location and ours at Weber and no difference in the quantity that will move per plant or from the plant, and we are in favor of the 3¢, 3½¢ and 4¢ rates as applicable to the district. (Tr. 809-810.)

RALPH N. NEUMANN was sworn and testified as follows:

Direct examination.

By Mr. Walter:

I live at Des Plaines and represent the Lion's Club there. Our membership consists of almost all the business men and manufacturers of the city. Des Plaines is on the Wisconsin division of the Chicago and Northwestern and Soo [fol. 731] lines, 16½ miles Northwest of Chicago and in the Chicago Switching district.

In 1927 over 5,000 cars moved in and out of Des Plaines, 900 of which moved thereto from points within the switching district including such commodities as coke, iron, steel, cinders, cement, pipe, fertilizer, white lead, crushed stone, etc.

We agree with Mr. Haynes' testimony with reference to Exhibit No. 15 that all points in the Chicago switching

district should enjoy the same rates, giving all stations shown in red on the exhibit the regular switching rate and abolishing the ½¢ arbitrary assessed industries shown on the green line. (Tr. 816-817.)

One of our industries manufacturing green house construction material has competitors in the inner zone and at Forrest Park, a green line station. Their competitors in Chicago and Forrest Park have lower raw material rates to their plants than the rate to Des Plaines although all are located within the switching district. The Des Plaines firm ships finished products to all points West of Cleveland in carload lots. The same competitive situation applies to other industries at Des Plaines and some find it cheaper to ship their finished product by truck. There are 17 green houses in Des Plaines; the three largest on the Soo line use 200 cars of coal, 75 cars oil, 75 cars fertilizer and 40 cars of material and lumber yearly. 150 of which originate in the Chicago switching district. The other 14 each use yearly from 6 to 15 cars coal trucked from team tracks. Des Plaines flower growers are at a disadvantage compared with growers in the inner zone and at green line stations as added cost of transportation on imported materials cannot be added to selling price. (Tr. 817-818.) All flowers produced in our territory go to the Chicago market and sell for whatever they will bring without regard to cost of production. 5 material yards at Des Plaines had approximately 3,000 cars in 1927, 250 originating in the district. They find it more economical [fol. 732] to truck to Des Plaines such commodities as feed, rather than ship by rail from points within the district. This analysis does not include the entire movement in and out of Des Plaines. (Tr. 818.)

Chairman Campbell: We will now adjourn until Monday, morning, May 21, 1928. (Tr. 821.)

Hearing reconvened at Chicago, Illinois, May 21, 1928 at 9 o'clock A. M.

J. L. Roberts, duly sworn, testified as follows:

Am traffic manager of the Barrett Company having a plant in the Chicago Switching District, located on the South branch of the Chicago river and on the Chicago &

Illinois Western, near Crawford Avenue and on the Illinois Northern, which was the original line when we built the plant. (Tr. 823.)

We refine crude tars at this plant and the principal products that are refined therefrom are roofing and paving tar, roofing and paving pitch, some creosote oils and a little roofing cement. The Jones & Laughlin case does not apply to the tar industry at Chicago, as all concerned distributing tar products have plants in the Chicago district and secure crude tars, both from within and without the district and distribute their products through the same general territory. One plant located at Philadelphia engages in the general distribution of tar products which is owned and operated by the United Gas & Improvement Co., which supplies the tar from its coke ovens and gas plants. Another plant at Bayway, is engaged in the chemical side of the tar industry; also one at Denver, Colorado, securing its tar from the gas plants and coke ovens at Denver, operated by the same interests owning the gas and [fol. 733] coke plants. (Tr. 824.)

Our Chicago plant supplies the territory West of the line drawn through Indianapolis to Cincinnati and over 90% moves to points outside the Chicago district that is to points in Central Freight Association, Illinois, and Western Trunk Line territories. A large percentage moves in our own equipment. Crude tar is a product of by-product coke ovens and gas manufacturing plants Our principal sources of supply of crude tar are the By Products Coke Co., and the Wisconsin Steel Co., located on the waterfront. Our plants were located on the Chicago river, with the intention of transporting our crude tar supply from the source mentioned by water and we have the necessary barge equipment to do so, which was the method employed in transporting tar into our plant on the North side which we vacated when the South side plant was completed. (Tr. 825.)

The Chicago & Illinois Western Railroad requested the privilege of entering our south side plant shortly after it was in operation, which necessitated their building a bridge across the river. (Tr. 825.) After this rail connection they pointed out their outlay and persuaded us to ship this supply of tar over their rails. We believed

when we built the plant that the Illinois Northern could take care of our tar from other points in the district outside the ones I am discussing and principal points outside the district.

While rail movement costs quite a little more per year than water transportation, we have continued to favor the Chicago & Illinois Western. We get 80,000 tons per year from the Wisconsin Steel Company and By-Products Coke Corporation, and our present rate is 2½ cents. The proposed rate of 3½ cents would be 20 cents a ton or $16,000.00 additional charges per year on the movement from these two plants. It is entirely an intrastate Illinois move- [fol. 734] ment and if this Commission or the Illinois Commission permits the increase we will revert to our previous practice of moving the material by water. We have the necessary barge equipment, and making pipe line connection with coke ovens is a minor expense. (Tr. 826.) We own the tank cars for the all-rail movement, with no mileage or other allowance, and it is more economical for a switching line to handle private equipment than carrier equipment. (Tr. 826.) It relieves carriers of the per diem charge.

My Ex. 55 is a statement showing present and proposed rates on coal tar and per ton mile and per car mile revenues at present and proposed rates from producing points in the district to Barrett Company's plant. At the 2½ cent rate the average car earnings of $22.50 for the average weight covers 1656 cars received during the first 11 months of the year 1927. Ex. 23 of the By-Products Coke Corporation, covering coal car movement, shows apparently carriers' cost of switching of $12.50 per car was via route they showed for movement, which leaves margin of approximately $10.00 per car, as the items which have been eliminated will amount to $1.50. This seems a very good margin, especially at the present rates, especially as the movement is in our own equipment, which we maintain without cost to the carriers and without mileage or other allowances. (Tr. 828.) (Said document was received in evidence and marked "Ex. No. 55, Witness Roberts.")

My next exhibit, 56, shows rates on switching at various points through Southern official classification territories. None of these points have the density of traffic of the Chicago district, and as to tar, present rates from points in

question compare very favorably with rates between other points. We have movements of tar from industries on the Buffalo Creek Railway to Harriet, New York, for a two-line haul of 18 miles, with a charge of $15.80 per car. We have movements of tar from Buffalo to Harriet as shown [fol. 735] on page 2 of Ex. 56, and an outbound refined tar movement in the Detroit district, as well as refined tar movement from the Cincinnati district, shown at page 5. We move tar outbound from Boston to the points shown, and in connection with the two-line rate, from Boston to Forest Hills (Tr. 829) through the Boston station of the New Haven Railway, being the only connection between the Boston and Albany and the New Haven. (Said document was received in evidence, marked "Ex. No. 56, Witness Roberts.") (Tr. 830.)

Ex. 57 shows carload switching rates for railroad and privately owned equipment. The proposed rates will apply on both privately owned and carrier equipment, which is contrary to the custom in many parts of the country; and in 58 I. C. C. 429 the Commission stated in substance that maintenance of equipment was one of the largest operating expense items in the operating costs of common carriers. Tank car maintenance is greater than box car maintenance. (Tr. 830.)

In 55 I. C. C. 683, the Kaw River Sand & Gravel case, the Commission prescribed 2 cents on railroad equipment and 1½ cents on privately owned equipment. (Said document was received in evidence, marked "Ex. No. 57, Witness Roberts.") (Tr. 831.)

Cross-examination.

By Mr. Davis:

I do not contend that distance should be a major factor in determining rates within the Chicago district. By Ex. 55 I undertook to show service that carriers undertook to perform at the rate in existence at the time they built into our plant. (Tr. 832.) My conclusion is that our rates are not only high enough from the standpoint of distance, but high enough from other standpoints I mentioned. We advocate that the Chicago district should have a uniform rate basis. So far as distance is concerned, I am. My [fol. 736] testimony is confined to the movement of coal

tar from the points indicated, and I am merely making the statement that if the carriers want this traffic they must maintain the present rates. That is all I am specializing in. My contention is that our rates should not be changed even though facts show that rates of 3 cents for single-line, 3½ cents for two lines and 4 cents for 3 or more lines are justified.

Referring to Ex. 56, the normal basis for road-haul rates (Tr. 834) is 70 per cent of 6th class in Central Freight Association territory, which I think would make higher than 3, 3½ and 4 cents as proposed by the carriers here, though I do not have the tariffs before me. In Ex. 56 I make comparison with rates in the Eastern district, but they are all switching rates. The line-haul rate from East Boston to Forest Hills is the 6th class rate of 10 cents; tar is 7 cents per hundred pounds. (Tr. 835) The 6th class rate in Central Freight Association tariff for 27 miles is 9 cents, and 70 per cent is 6.3 cents. The classification is higher in New England territory than in Central Freight Association territory. The rates shown in Ex. 56 are not all reciprocal switching rates. All on page 1 are not. If you mean by "reciprocal" where the rate is put in on the average principle and absorbed by the line-haul carrier, those are not reciprocal rates. They are local movements. Buffalo to Harriet, on page 2, is a local movement, and so is the Rochester rate. Most of them are rates we pay on our own traffic. On page 1 there are three 2-line movements, and the rest are single-line. On page 2 there is one two-line movement, and the rest are single-line. (Tr. 837.) Page 2, from Buffalo Creek industries to Harriet, moves Buffalo Creek and New York Central. All inbound shipments of tar move in our private cars where shipped by rail. Carriers have no equipment to furnish for tar. [fol. 737] My statement was that some of the carriers have expressed a willingness to maintain the present rates, and they are parties to the tariffs under suspension. (Tr. 838.) As to shipments moving in Chicago that we are discussing here, we give the rate applying for three-line movements where the Chicago & Illinois Western is involved. There is no difference in their handling other traffic. The tanks we use are owned by our company, approximately 3,000 in number, and we do lease cars also at about $35.00 per month. (Tr. 839.) That would be on

a movement from the By-Products Coke. We do not receive a cent of mileage from the carriers, and as far as line-haul traffic is concerned, the allowance represents about 40 per cent of the maintenance costs on our equipment. (Tr. 839-840.)

JOHN W. BINGHAM was sworn and testified as follows:

Direct examination.

By Mr. Walter:

An traffic manager, Corn Products, Refining Company, which manufactures starch, corn syrup, corn oil, corn sugar, gluten feed and other corn products, with a plant at Argo, Illinois, within the Chicago switching district, on the Indiana Harbor Belt, Belt Railway, and Chicago & Alton. (Tr. 842.) The plant capacity is 80,000 bushels of corn per day. We have 17 miles of track, representing $630,000.00 investment, all owned and maintained by the company, which is conducive to economical plant operation and to efficient switching service for carriers. Must of this trackage is necessary for plant operation, but considerable is used by the carriers for their convenience in classifying cars inside our yards, which service, yard space and trackage are on our own property. This trackage is used by the carriers for all our business, and none of which is set aside exclusively for switching district business, that [fol. 738] being a very small part of the total carload movement, approximating but 13 per cent of the large volume flowing in and out of our plant that is subject to attractive road-haul revenues, which compared with the proportionately small movement in the Chicago district, should enable the carriers to perform the latter at very nominal cost. (Tr. 843.) The Belt Railway, under agreement with the other two carriers does all switching inside our yard and bills the other roads at actual cost per car. By plant switching is meant break up of cuts, spotting of cars at various loading and unloading platforms and switching incidental to daily operation of the plant. All roads bring in their own deliveries and take outbound loads which they switch and classify in our yard. Corn is the inbound movement and comes in lots of 25 or more cars, whether re-

ceived in road haul or from elevators in the Chicago District. A check from July 1st, 1925 of our business and the periods during that time corresponding with those used by carriers for their cost and traffic study and find the car load movement compares favorably with perhaps one or two exceptions. (Tr. 844.) During the time mentioned, 50,000 carloads moved in and out of our plant, the two movements being about equal; 6,822 cars moved to and from points in the Chicago Switching District, about 13%. Of these, 4,740 cars were corn from Elevators in the Chicago District and 2,082 moved outbound to consignees in the Switching District. We compete with similar manufacturers located at Cedar Rapids, Clinton and Keokuk, Iowa; Granite City and Decatur, Illinois, and are at a decided disadvantage in making delivery to consignees in the Chicago Switching District. Our corn is purchased on the Chicago Board of Trade and the price includes freight rate, which is after inspection, ordered to Argo with switching absorbed and to that point has paid the flat Chicago [fol. 739] grain rate. (Tr. 845.) This grain is milled and the products which are shipped to the Chicago district pays full published rate from Argo to delivery points. (Tr. 845.) Our competitors at points previously named can purchase their corn at the same points where our corn originates either in Iowa or at the Missouri river and under transit privileges, mill the same and ship the products to the same consignees in the Chicago district at the flat Chicago grain rate, while we must pay in addition the Chicago switching rate. That disadvantage will increase if the increased switching rates are allowed. The large number of cars moving from our plant in switching service where we pay minimum on 60,000 pounds, but actual weight is less, aggravates the situation. The manufactured product of our competitors is subject to classification minimum and moves to the Chicago District at the rate on actual weight, due to ability to load to classification minima at or less than switching rate minima. The former range between 36,000 and 40,000 pounds. (Tr. 846.) In the period mentioned, 2,082 cars moved outbound for Chicago deliveries of which 1,058 cars averaged 48,000 pounds. Under suspended rates, our freight charges would have been increased $12,066.57, based on 236 cars single line haul, averaging 46,657 pounds and 305 cars average weight 74,588 pounds, the former

taking ½¢ increase on the 60,000 pound minimum and 305 cars ½¢ on actual weight, gives total of proposed advance $1,845.65. (Tr. 847.) The proposed increase is 1¢ per 100 on two line hauls and based on 819 cars under the 60,000 pound minimum and 724 cars of average weight of 73,301 pounds, the total proposed two line advance in revenue would be $10,220.92. We pay freight on actual rate of grain to our plant which shrinks in manufacture, while our competitors, taking same shrinkage at their rates, save freight charges thereon between their plants and the Chi- [fol. 740] cago switching district. (Tr. 848.) To save time, I will not offer an exhibit or explain how this feature works out because I concur in the statement and examples to be put in by Mr. C. D. Miller, Traffic Manager of the American Maize Corporation, who has a plant located at Roby, Indiana, in the Chicago Switching District, whose situation is exactly similar to ours and who will immediately follow me to the stand. (Tr. 848.) Our situation regarding the purchase of corn at Chicago, while our competitors purchase at points of origin, is one that always exists between the intermediate manufacturer and the point where the rate breaks. (Tr. 849.) And our competitors are given transit to equalize their position with the rate breaking points but in our instance, the transit arrangements of our competitors give them an actual advantage. (Tr. 850.) Under the transit arrangement, our competitors get the advantage because of their location but the transit privilege should not give that advantage because of their location. (Tr. 851.) The shrinkage is not a big disadvantage but the switching is. We think that instead of advancing the freight rates on our cars in the switching district, the carriers should remove the existing discrimination against us by authorizing milling in transit at Argo on milling destined to the Chicago switching district and arrange to absorb crosstown switching on grain moving to our plant from elevators within the district.

Taking Iowa corn, it is milled either at Clinton or Chicago and the products shipped to consignees in the switching district. The corn moving to Clinton requires unloading, reloading of product and shipping to the same consignee to which we ship but our competitor, (Tr. 852) at Clinton pays the flat Chicago rate. We pay the flat Chicago rate on the total amount of corn, milling it at our plant,

which compares identically at Clinton. It is then loaded [fol. 741] as product and shipped to the same consignee in the Chicago switching district and we pay the present switching rate or will pay the proposed 3½¢ rate on our product.

The present milling and transit arrangement of our competitors would discriminate against us if our switching rate was only 1¢. Our present rates or the proposed rate aggravate that condition in the matter of degree and that situation has existed even before the proposal to increase the switching rates. (Tr. 853-854.)

Cross-examination.

By Mr. Davis:

If the Consumers Company had a car of coal shipped to their west plant they would pay the Chicago rate from any given point of origin, and if we ordered a car from the Consumers Company to our plant we would pay the Chicago switching rate on it and would be the same as the case of grain we buy on the Chicago Board of Trade and have switched to our plant; but I do not see how coal can be compared with grain. (Tr. 855-856.) We have a plant at Kansas City and can ship to Chicago the same as Cedar Rapids, but I am talking about Argo in this district. We believe, because we have attractive outbound shipments in road-haul, that switching being incidental to road-haul business, should influence the carriers in making a lower rate within the Chicago district than would otherwise exist. The price we pay for grain purchased on the Chicago Board of Trade includes the freight from point of origin, and in that form we pay it. (Tr. 857-858.) The freight rate is included in the price we have to pay. The producer receives something less than the Chicago market price. (Tr. 858.) I think the line-haul business of the tenant lines of the Belt Railway should have some influence on the Belt's switching rates. (Tr. 859.) Our principal products are starch and syrup, and our competitors have transit ar- [fol. 742] rangements under which they receive corn and produce syrup. (Tr. 859.)

C. D. Miller, called in behalf of shippers, was duly sworn and testified as follows:

Direct examination.

By Mr. Walter:

Am traffic manager of American Maize Products Company at Chicago, Illinois, having plant at Roby, Indiana, in the Chicago Switching district, served by the Pennsylvania Railroad and the Indiana Harbor Belt. (Tr. 860.) We own and maintain 3 miles of track, an investment of $120,000.00. Car spotting at our plant is done by the Pennsylvania Railroad. We mill from corn, starch, dextrine, corn syrup unmixed, corn sugar, gluten feed, germ meal, and corn oil, and our rate situation is identical with that of the Corn Products Refining Company at Argo, both points being in the Chicago switching district. We are at a decided disadvantage compared with mills located outside that district.

Chairman Campbell: Now, Mr. Walter, let me understand this situation. The question of milling in transit is not in this case.

Mr. Walter: Not at all; but we simply desire to show that increased shipping rates will increase the existing disadvantage. (Tr. 861-862.)

The Witness (continuing): We handle 20,000 cars of freight annually in and out of our plant. During 1926 in the Chicago switching district we shipped 1402 cars of corn products. (Tr. 862.) Sixty-seven per cent of single-line shipments were below the 60,000-pound minimum at the 2½ cent rate, on which we paid and absorbed an average rate of 3.13 cents per hundred pounds. Sixty-eight per cent single-line shipments paying 3 cents were below tariff [fol. 743] minimum weight, on which we paid average rate 3.79 cents per hundred. Forty-two per cent two-line switching district shipments under 2½ cent rate were below tariff minimum, and average rate paid was 3.4 cents per hundred pounds. These average rates resulted to a great extent from competition of mills outside the Chicago switching district enjoying the lower classification minimum. We paid approximately $24,000.00 switching charges during the year 1926, which would be increased $4,000.00 at the proposed rates. To points in the Chicago switching district, with few exceptions, we pay switching charges in addition to freight paid by competitors outside the Chi-

cago switching district. (Tr. 863.) Transit provisions for mills outside the switching district permit application balance of corn rate to Chicago on corn products except corn oil, while we pay the corn rate to Chicago and product rate out for Chicago switching district deliveries.

Corn prices at country elevators from which competing mills draw supplies are generally the Chicago market prices, less the freight rate to Chicago. One hundred thousand pounds of corn produces, exclusive of corn oil, 85,280 pounds of starch or dextrine, including corn germ meal and gluten feed. Converting starch or dextrine into corn syrup unmixed or corn sugar, excluding corn oil, would produce 100,420 pounds. (Tr. 864.) Because of varying conditions, including high moisture corn, and the varying conditions determining the different products, we cannot get accurate total average yield. The average proportions used are based on our operations and believed to be representative. (Tr. 865.)

Chairman Campbell: It must be thoroughly understood that the Commission is not going to take this testimony regarding transit conditions and weigh it or determine whether or not any switching rate is in violation of Section 3.

[fol. 744] Mr. Walter: That is right, Mr. Chairman; we will not present that question in this case. (Tr. 866.)

The Witness (continuing): Grain is to present its own situation. Ours are grain products, and we are not asking for the exclusion of these commodities from the all-commodity basis. (Tr. 867.) Based on 2 cars of corn syrup and/or corn sugar to 1 car of starch, the average yield, on this proportion of grind was 95,373 pounds, excluding corn oil of 2,480 pounds, or grand total of 97,853 pounds. Assuming the corn was shipped from Seymour, Iowa on the Rock Island, the same 100,000 pounds of corn, we and interior mills pay the same price at the country elevator. From Seymour, Iowa to Chicago (Gresham) via the Rock Island the rate is 18½ cents, 340 miles; Seymour, Iowa to Keokuk the rate is 11½ cents, distance 121 miles, and from Seymour to Chicago via Keokuk is 467 miles. From Seymour to Chicago (Gresham) we would pay $185.00 freight on 100,000 pounds; and to make delivery of the products of that from our plant to a point in the Chicago switching

district, the switching rate is 2½ cents on the 97,853 pounds and we would pay switching charges of $24.46, or a total of $209.46. (Tr. 868.) The freight from Seymour to Keokuk is $115.00, and average product yield, except corn oil, being 95,373 pounds, would move to Chicago on the balance of the corn rate from Seymour, or $66.76 for the haul from Keokuk to Chicago (Gresham.) Transit does not apply on corn oil, and it takes a 16-cent rate from Keokuk to Chicago, making the total freight paid by the Keokuk mill $185.73 on the corn originating at Seymour. (Tr. 869.) [fol. 745] The car load rate on corn originating at Grinnell, Iowa, moving to Chicago, (Gresham) is 17½¢, via the Rock Island, distance 293 miles. From Grinnell to Clinton, the rate is 12½¢; Grinnell to Chicago, Illinois, (Gresham) via Clinton is 404 miles. Using the same tonnage, we would pay the rate on corn from Grinnell to Chicago, $175.00 and switching $24.46. (Tr. 869.) Clinton would pay 12½¢ corn from Grinnell to Clinton, $125.00 and the balance of the corn rate to Chicago on the products, excepting corn oil and its total charges on corn and products would be $176.66 or $22.80 less than we pay. Using the same illustration, with the corn milled at Cedar Rapids, the mill there would pay a total of freight on corn and products, $176.21 or $23.25 less than we pay. Similar illustrations may be used taking Vincent, Iowa corn milled at Cedar Rapids, Albia corn milled at Keokuk and Winthrop corn milled at Cedar Rapids, Merrill corn milled at Pekin, Illinois, in all of which instances we pay more than the outside mills pay on the corn and the products shipped out. (Tr. 871.) In these illustrations we can use Chicago switching rate of 2½¢ but if the average rate paid by us was used, due to meeting competition, of lower minima from outside mills, our disadvantage would be increased accordingly. (Tr. 871.) Average car weight of corn to our plant in September, October and November, 1927, was 84,376 pounds. Average weight of products during those months was 50,483 pounds. Using these round figures, there is 168% of car mile service through milling stations to Chicago on products compared with 100% on corn to Chicago.

Crosstown switching is absorbed under milling in transit rules in some switching districts. It is done at St. Louis, and East St. Louis, where milled on the rails of the Chicago, Burlington & Quincy Railroad and others, the absorp-

tion being by the Wabash. (Tr. 872.) The Northwestern absorbs cross-town switching on sugar, originating on its and connecting lines West of the Mississippi River and [fol. 746] stored in warehouses at Chicago for subsequent movement to the Chicago switching district. The remedy for this disparity would be the establishment of transit arrangements at Roby and Argo, permitting us to draw corn from West of the Mississippi River and ship products to Chicago switching district on the same basis as Interior mills. I concur in Mr. J. W. Bingham's testimony.

Chairman Campbell: You understand the matter of transit at Argo is not in this case.

Mr. Walter: That is correct. (Tr. 873.)

Chairman Campbell: Have you not put in sufficient? Will not your witnesses on this or the malt situation be rather along the same line?

Mr. Walter: Perhaps I could make an additional statement in connection with that which would suffice if the respondents will accept it. With reference to Malt, Barley can move from Minneapolis at 11½¢ to Chicago, Milwaukee and Manitowoc, all taking the same rate. When it is converted into malt at Milwaukee, it may move to any destination in the Chicago district on the balance of the 11½¢ rate while we pay the same rate for the long haul and then pay the switching rate in addition.

Chairman Campbell: Are any objections to that statement going into the record?

Mr. Davis: There is no dispute as to the fact of transit but we do not know that the rate is 11½¢. (Tr. 874.)

The Witness (continuing): We do not claim that we can not load our commodities to the carload minimum and the fact that we do not, is due to competition of outside mills where they can ship on lower minima. Where the consignee can buy a car of 36,000 pounds from others, he will not buy more from us and we have to pay on 60,000 pounds to the district.

[fol. 747] Chairman Campbell: Who is the next witness?

H. J. Campbell: Now, Commissioner, to shorten the testimony as much as possible, we have another witness, Mr. C. A. Witt, connected with the B. A. Eckert Milling Co., in the same situation as that testified to by Mr. Bingham and Mr. Miller, except that it mills wheat and rye. If respondents will concede if Mr. Witt testifies, he would corrob-

orate the testimony of the two witnesses who just proce-ded, we will not need to put him on. The Eckert Company ships flour and products of wheat and Rye.

Mr. Davis: They would be the same then if they are in the district.

Mr. H. J. Campbell: Yes, they are in the district.

Mr. Davis: All right.

Chairman Campbell: That will shorten it. (Tr. 876.)

B. J. Roggenbuck, duly sworn, testified as follows:

Direct examination.

By Mr. Walter:

Am assistant traffic manager of John J. Jelke Co., and Geo. P. Braun Co., of Chicago. (Tr. 877.) The Jelke Co., of which the Braun Co., is a subsidiary is at Polk and Washtenaw Ave., Chicago and is served by the Chicago and Northwestern. We manufacture oleomargerine, lard, bakers shortening, condensed and evaporated milk. We use raw materials consisting of coal, lumber, raw leaf lard, olio oils, vegetable oils and other animal and vegetable fats, salt, fiber board box cartons, butter tubs and milk, received in car load quantities. Our coal comes from Southern Illinois mines; the lumber for box material received from Chicago manufacturers and from points in states South of the Ohio River and from points on the Ohio River. Raw leaf lard comes principally from slaughter houses in territory in states between the Missouri and Mississippi Rivers, and occasionally from Eastern points such as Buf-[fol. 748] falo and Indianapolis; vegetable oil, including cocoanut, peanut and cotton seed oils come principally from the Pacific Coast, New Orleans and Eastern Seaboard markets. (Tr. 878.) Salt comes from Michigan mines. Fiber boxes from the Chicago district and points in Wisconsin and Michigan; Butter tubs come mostly from Illinois and occasionally from Central Freight Association territory; Milk comes principally from Fox River district in Illinois. All switching to and from our plant is done by Chicago & Northwestern Railway, and the total tonnage is from 3,000 to 4,000 cars annually. 50% of inbound raw material origi-

nates in that part of the Chicago district served exclusively by the Chicago Junction Railway, commonly known as the stock yards district.. Our commodities are perishable both as to raw materials and finished product and to meet our needs, the Northwestern makes two switches at our plant in 24 hours. (Tr. 879.) We are approximately ¾ of a mile from the Wood Street yards, at which our freight is received and distributed. (Tr. 879.) A great portion of traffic originating at Western points is not handled through Wood Street because the freight, being perishable, the Northwestern, for its convenience and ours, discharges these cars from through trains at Taylor St., because all trains must make complete stop at that point before crossing tracks of other lines entering Wood Street yards. These trains often times wait 45 minutes to cross these tracks and setting out cars in this idle time is considerable saving to the carrier, where the cars would otherwise go to the yards and be back hauled for the usual handling. Taylor Street is a block from our plant and the regular switching crews pick these cars up at Taylor Street without any additional time or expense. Our property, including tracks owned by the company, established to make more efficient the handling of cars and products is worth [fol. 749] about $50,000.00. (Tr. 880.) The railroad tracks reaching our tracks are nothing elaborate and do not represent a great outlay for the benefit of our industry or those included in the immediate vicinity. The switching rates in the past and at present have aided materially in permitting our company to build up a substantial business, as well as the shippers furnishing our raw materials originating in the Chicago district. (Tr. 881.) If the proposed switching increases become effective it will be impossible to spread the increased transportation cost to the individual unit on which these prices are figured. Either shipper or consignee will be obliged to shrink their profits, if they have any. As to raw materials, it is unlikely the shipper will assume this additional burden. We have been at this location approximately 20 years and that particular district is not congested in the sense there is not a free movement, and the heavy volume of traffic is handled promptly in an ordinary manner without large expense. (Tr. 881.)

Recently the principal switching and interchanging of freight for all industries in Chicago on the Chicago & North

Western has been done at Proviso, its new $16,000,000 terminal, and under this operation we have not seen anything extraordinary in the handling of our cars in either direction. The change caused considerable confusion to the industries and to the railroad. There were delays that cannot be chargeable to congestion or physical limitation of railroad operation. For several years we moved leaf lard from Austin, Minnesota, via the Chicago Great Western, delivery at Wood Street on the Chicago & North Western via Baltimore & Ohio Chicago Terminal. On arrival at Chicago in outer yards of the Great Western the second noon after shipment, that carrier would move the cars to its connection with the Baltimore & Ohio Chicago Terminal at Homan Avenue, and the latter to its Robey Street yard, requiring 12 hours or more to make delivery to the Chicago [fol. 750] & North Western covering a distance of less than ¼ mile. (Tr. 882.) This operation required an unnecessary intermediate switching carrier. Interchange between the Chicago & North Western and Chicago, Milwaukee & St. Paul at Western Avenue was not shown in the tariff, but these roads finally permitted the shipments to be interchanged at Western Avenue, a mile from our plant, which has been done the past 2½ years, thus saving 24 hours' time in receipt of our cars.

Circuitous switching hauls are unnecessary in many instances on traffic from the Wabash, Monon, New York Central, Erie and Pennsylvania Railroads. Cars from these lines are moved to 40th Street via the Belt and rehandled at Wood Street. A much more convenient three-line haul is via the Chicago Junction, which would eliminate 40th Street and considerable time effort. (Tr. 883.) The Chicago & North Western at present make two pick ups every day from Chicago River & Indiana yards for all cars delivered by such lines that have operating arrangements for the particular delivery. This service is very satisfactory and other traffic should be allowed to flow freely through this gateway. Traffic from Illinois Central Railroad is forced via the Belt to 40th Street instead of using direct delivery available between Illinois Central and Chicago & North Western at Wood Street through what is known as Air Line branch, running from Jackson to Wood Street. The Illinois Central is permitted by the North Western to make deliveries of perishable articles via the Air Line (Tr.

884), but all dead freight is required to move via the Belt at Clearing and thence to 40th Street for Wood Street. We had difficulty with leaf lard shipments from Waterloo originating on the Illinois Central, resulting from delay at Chicago by reason of moving via the Belt through the 40th Street gateway, which are now coming direct via the Air Line, thus saving 24 hours' time. This movement elimi- [fol. 751] nates the intermediate carrier and reduces absorption expense of the road-haul carrier. The present switching operation is not the most efficient, and carriers are attempting to penalize us for their failure to take advantage of some of the natural actual conditions existing. (Tr. 885.)

The Chicago & North Western has a stock run that stops at Taylor Street before going to the stockyards, and while there takes our loaded cars and hauls them direct to Chicago Junction yards for interchange with the Eastern lines, being done only at the expense of what may be called idle time. These road-haul trains do not enter Wood Street for subsequent classification and handling. This should be given consideration in determining fair cost of switching at our plant. Cars which we receive daily from packing industries at the Union Stockyards move via the Chicago Junction Railway to 47th Street, and the Chicago & North Western pulls them twice a day. On train pick-up these cars go either to 40th Street or Proviso; Wood Street cars are set out at Madison Street and sometimes Western Avenue. The switching crew at Wood Street sometimes runs to Madison and brings these cars back. On having trains come to Wood Street, Western Avenue trains put these cars at the head end and set them out at Taylor Street. Ofttimes the Western Avenue trains have cars originating at points beyond Chicago and the crew sets them out in addition to the others mentioned. (Tr. 886.)

Cars at 47th Street on the Junction should be there classified and the trains held accordingly. The Chicago & North Western now and for some time has often allowed road-haul trains to go beyond Proviso with either Western Avenue, 40th Street, or Stockyards shipments; and in such cases cars consigned to us are set out at Taylor Street and which eliminates terminal switching expense at Proviso and at Wood Street almost in its entirety.

[fol. 752] Our outbound shipments move principally eastbound and delivery is made via the Stockyards. Empties

returned are delivered to the Belt at Clearing for 40th Street, handled to us at Wood Street, and sometimes move to Proviso for handling at that point back to the Wood Street yard. The carriers' Ex. 7, showing average operating cost one-, two- and three-line hauls under the cost study for Chicago switching, carries various erroneous items, the same subject to question. (Tr. 887.)

Page 3, group 28, shows 80 cars of animal products. Our actual records show we received 52 cars of this grouping, originating in the Chicago district. The exhibit shows 59,439 pounds average weight, while all cars are billed at 60,000 pounds minimum. Using the actual minimum on which charge is collected would reduce cost charges proportionately. The 52 cars does not include 35 of animal products that were received during the same period but originating at points outside the district. This is true of the salt group, No. 38, covering 9 cars that originated beyond the district. From Chicago Cold Storage Company at 15th and State Streets and Indiana Avenue we get neutral lard that moves spasmodically. The industry is on the Air Line, which serves under joint operation the Michigan Southern, the Illinois Central, Chicago, Burlington & Quincy, and Chicago & North Western (Tr. 888); the four lines sharing the cost, but each doing its individual switching. About 150 cars per year are stored at that particular point, moving around 5 or 10 per week in and outbound. A saving in switching costs would result if one line performed the switching for the four lines.

The United States Department of Agriculture, Weather Bureau, Records Division, shows the average mean temperatures, lowest and highest, by months, in Chicago for the year 1927 as follows: January, average mean 25, lowest -9, highest 42; February, average mean 35, lowest 16, highest 56; March, average mean 42, lowest 24, highest 71; [fol. 753] April, average mean 48, lowest 31, highest 79; May, average mean 57, lowest 41, highest 86; June, average mean 65, lowest 47, highest 94; July, average mean 72, lowest 56, highest 95; August, average mean 67, lowest 55, highest 86; September, average mean 69, lowest 41, highest 95; October, average mean 58, lowest 40, highest 83; November, average mean 43, lowest 23, highest 75; December, average mean 27, lowest -1, highest 52. (Tr. 889-890.)

The Chicago & North Western at various times has empty cars subject to repair in some manner along the industry track serving these particular industries, including ours. The switching crews with a regular string of cars for delivery must make complete switch of all the empties standing there to begin entries to some of the industries. The storage of these empties seriously hampers the switching crews in making deliveries to industries through the additional time required for switching the empty box and stock cars around, and which should not be chargeable to switching at industrial plants. (Tr. 890.)

Typical long haul switching which could be avoided is shown by International—Great Northern car 14133, loaded by National Box Company at 38th and Racine Avenue, served by the Chicago Junction, which received it at noon May 16, 1928, and moved it to its State line at 40th and Racine, 2 blocks from the plant, where it was left. It was then taken by another engine with others cars to 47th and Racine, about 1 mile away, in the district where cars are placed for the Chicago & North Western. The latter hauled it about 20 miles to Proviso, passing through Wood Street. After further classification at Proviso it was back-hauled 13 miles to Taylor Street for delivery to us. This movement eliminated Wood Street; but total car detention, conservatively figured at 4¼ days, using that route, could have been reduced to 1¾ days. (Tr. 891.) Based on my [fol. 754] personal experience and observation for a period of five years, there has been nothing extraordinary required in handling trains in winter months. There are only two cases involving any delay, and that was not more than 2 or 3 hours. One was caused by the engine devoted principally to our service freezing up over night in the roundhouse, and the other was delay attributable to snow. Maintenance crews have done little work in removing snow and ice or sleet from the tracks. The private cars of Armour, Swift and Wilson handled in the stockyards by the Chicago Junction are loaded to maximum capacity, with no allowance made to the owner by the carrier. (Tr. 892.)

Cross-examination.

By Mr. Orcutt:

The shipments from Albert Lea, Waterloo, and Fox River Valley are long-haul movements, and the switching

involved on such movements is not involved in this case. (Tr. 893.) The cars set out at Taylor Street, which are a great number, materially reduce the classification and handling charges of the respective yards. The cars referred to moved during the test period, and if any cars included in the cost study were set out at Taylor Street, that would be reflected in the cost. (Tr. 894.)

My position requires me to observe all work incidental to handling cars in and out of our plants. Have been around the Chicago Terminal, but cannot say the times per week that I go around terminals following the cars, but I have been in the respective yards; at Wood Street almost every day in the week, which is in the vicinity of Western Avenue and of that entire district. Have not been in the Chicago Junction yard for a long time. Have been with the Jelke and Braun companies for 5 years. Prior to that with a roofing company and prior thereto with the Chicago, Milwaukee & St. Paul Railway in various capacities, ending up in the commerce department under the super-[fol. 755] vision of Mr. Soergel, which work ended in 1923 or 1924. (Tr. 895-896.) Worked in the general office studying tariffs, but was never in the operating department of the St. Paul Railway. (Tr. 896.)

J. S. Brown was duly sworn and testified as follows:

Direct examination.

By Mr. H. J. Campbell:

Am manager of transportation department of Chicago Board of Trade of the City of Chicago, and have been for about 14 years. Prior to that had considerable railroad experience, all in the traffic department.

The effect of General Order No. 28 upon switching rates in use here is shown in blanket supplements issued by the Rock Island to all tariffs in effect on June 24, 1918, it being identical with all blanket supplements issued by all other railroads pursuant to that order, and which may be identified by reference page 11, being Supplement 12 to I. C. C. No. 9996. There were probably 100 or 200 other tariffs supplemented. This supplement in substance provided that

all switching rates incident to road-haul, that is switching charges or rates which road-haul carriers absorbed, either in or out, were not to be increased, but local switching rates were increased, and that provision is on page 2 of the supplement under the head of "Exceptions," and is as follows: "This supplement does not increase charges for terminal services or facilities, switching when performed in connection with road haul, weighing, demurrage, car service, transfer, diversion, reconsignment, refrigeration, icing, storage, elevation, or other special service." (Tr. 898.)

The Lowrey intra-district rates, Tariff 21 Series, on June 24, 1918, were 1½ cents per 100 pounds for two-line hauls and 2 cents for three lines, minimum 60,000 pounds. [fol. 756] General Order 28 on June 25, 1918, increased these rates 25 per cent, or ½ cent on each of the two items; the two-line rate went to 2 cents and the three-line rate to 2½ cents. The 40 per cent increase August 26, 1920, made the two-line rate 3 cents and the three-line rate 3½ cents. A 10 per cent reduction on January 1, 1922, made the two-line rate 2½ cents and the three-line rate 3 cents, which are the rates in effect today. Since June 24, 1918, two-line rates have been increased 66 2-3 per cent and three lines 50 per cent. If the proposed increases become effective the rates of June 24, 1918, will be increased 133 per cent for two-line hauls and 100 per cent for three-line. (Tr. 899.) The switching rates which under the 40 per cent increase became 2 cents were not reduced 10 per cent because that reduction equaled .02 cents, making 1.8 cents, and the rule relative to disposal of fractions caused the rate to remain at 2 cents.

Car rates on grain for switching in the Chicago district varied on June 24, 1918, just as they do today. Taking what are known as connecting-line switching rates, which a switching road charges from connection to the elevator or mill, or from an elevator or mill to a connecting line within the Chicago district, the inbound switching rate quite generally in effect on June 24, 1918, was $3.00 per car, which became $4.00 under General Order 28, $5.50 under the 40 per cent increase, and $4.95 under the 10 per cent reduction. The outbound switching rate on June 24, 1918, from elevator or mill to a connecting line on railroads such as the Belt or Chicago, Burlington & Quincy, for example, was

$4.50 per car, which became $5.50 under General Order 28, and with the 40 per cent increase $7.50, and under the 10 per cent reduction $6.75 per car. (Tr. 900.)

[fol. 757] The membership of the Chicago Board of Trade includes persons, firms or corporations dealing in grain and grain products, as well as manufacturers such as Corn Products Refining Company, the American Maize Products Company, maltsters, another quite important group, the animal and poultry feed manufacturers, and seed companies. Grain product rates were increased and are under suspension, but with minor exceptions rates on grain were brought into the case on the Commission's own motion. (Tr. 901.)

Speaking of grain products, they are quite generally today in the Lowrey Tariff 21 Series. The Chicago Board of Trade filed separate application for suspension of these increased rates, as well as joining with other shippers in a general petition for suspension. Our members are chiefly interested in grain products such as flour and other products of wheat and rye; starch, gluten feed, gluten meal, corn syrup, corn syrup unmixed (glucose), corn sugar, corn oil, and other products of corn; salt, animal and poultry feeds, and various ingredients entering into their manufacture, and in seeds, not including grain screenings, which are classified with grain. Millers, maltsters and feed manufacturers are likewise interested in switching rates on supplies such as machinery, bags, etc. (Tr. 902.) Their interests are interwoven with those of other protestants who are opposing the increased rates. In some instances the suspended rates were subject to the 60,000-pound minimum, which is not the case with the present rates; some carrying minimum weights as low as 30,000 pounds, and presumably these were increased to obviate violations of the 4th section.

Increases have been made covering a small movement of grain from elevator to team tracks, and in some instances from elevators to small industries like feed stores, from 2½ cents to 3 cents, etc., to which we object in so far as they apply to grain; believing that grain rates should not have been increased. Crosstown or industrial switching [fol. 758] at other large grain markets in milling centers exactly similar to crosstown switching here, is absorbed. It is paid in some instances just as we pay it here, but

instead of the carriers retaining it, they absorb it. (Tr. 903.)

We also protest against the increase in the road minimum rate and minimum charge per car that comes under Lowrey Tariff 20 Series, a very important thing to which I will refer later.

The minimum applicable to the hundred-pound rates in which our millers, maltsters and feed manufacturers are interested is 60,000 pounds. Their competitors from the outside to the same consignees have a 40,000-pound minimum. The three-line rate of 4 cents, if effective, makes charge $24.00 per car at Chicago, and on 40,000 pounds equals 6 cents per hundred, or higher than the rate between Chicago and Milwaukee, and 50 per cent higher than the rate which the Chicago & North Western voluntarily established from Sioux City to Omaha and Council Bluffs very recently. Chicago wheat and rye millers, feed manufacturers and corn manufacturers, in order to keep their plants running, often find it necessary to purchase grain in storage here at the elevators, which constitutes one of the principal crosstown movements and occurs when quantity or quality of grains coming in do not meet their requirements. (Tr. 904.)

The principal parties affected by the increase in the 100-pound basis, Lowrey Tariff 21, are B. A. Eckert Milling Company; Washburne-Crosby Company, millers of wheat and rye flour, and offal such as bran, middlings and shorts, which are shipped crosstown to the feed manufacturers; Corn Products Refining Company; and American Maize Products Company. Feed manufacturers are J. J. Badenoch Company, Rosenbaum Brothers, Hales & Hunter, being also maltsters, Arcady Farms Milling Company, Albert Schwill & Company, being also maltsters, Albert Dickinson Seed Company; all located in Illinois. (Tr. 905.) At Hammond, Indiana, is the Nowak Milling Company, the Pratt Food Company, and Chapin & Company. There are [fol. 759] others receiving crosstown business, such as warehouses, small industries, bakeries, and chain stores such as the National Tea Company, etc. (Tr. 905-906.)

As to grain, the rates on the great bulk that is switched crosstown at Chicago have not been changed. They are not under suspension and are brought here by the Commission under its order for a general investigation. For that rea-

son we have gone to some length to show what crosstown absorptions are at other places. These crosstown grain switching rates are published by the individual carriers in individual tariffs, and we pay such railroad its local or connecting-line switching rates, which are not always uniform, as will be explained later. (Tr. 906.) Chicago is not a large milling center such as Minneapolis or Kansas City, but compares favorably with points like St. Louis. It does not compare with Cedar Rapids in some milling branches out there, although it does so far as the Corn Products and American Maize Products are concerned. Our feed manufacturers compete with Cedar Rapids to a very great extent.

The grain storage capacity in the Chicago district at the present time is 53,253,000 bushels, 19,130,000 of which is public storage. These elevators are under the jurisdiction of the State Registrar, and all grain going into them is subject to his jurisdiction, who is a part of the Department of Commerce. (Tr. 907.)

Elevator certificates are issued by the State Registrar for all grain going into the public elevators where the grain is not treated, but merely placed for storage, and it must be delivered on surrender of the elevator certificates to those who hold them. The greater part of this storage is devoted to grain merchandising; that is, handling the grain in and out, as distinguished from milling, and Chicago is the largest grain merchandising point in the country, as indicated by the large public storage space.

[fol. 760]. Along the Calumet River, beginning about 93d Street and extending south about 25 blocks to 118th, are elevators with over 25,000,000 bushels capacity, some being public and some private. The Washburne-Crosby mill is on the Calumet River, but I have not included its storage. All these elevators are on the west bank of the river except the Norris and the Keystone, which are on the east side, with a capacity of 3,450,000 bushels, which are served by the Pennsylvania and the Indiana Harbor Belt railroads, the former doing most of the switching. All elevators in the Calumet district can move their grain out by lake as well as by rail. (Tr. 908.)

The connecting line switching rates, that is, from a connection to an elevator or from an elevator to a connection are all for switching district delivery. The charge via nearly all of the trunk lines to elevators from connections with other lines is $4.95 per car. Practically all of the

belt lines make the same charge per car inbound though there are exceptions to this. The Chicago & Alton rate is $6.00 and the Chicago & Northwestern rate to Rockwell elevator is $6.75; New York Central charge is $3.60, which that road did not increase under general order 28. From elevators to connecting lines, the rates vary more than they do inbound. Most road haul carriers charge $4.95, except the Chicago & Alton with a charge of $6.00, the Burlington $6.75 and switching lines like the Chicago River & Indiana and the Belt Railway also charge $6.75. (Tr. 909.) Indiana Harbor Belt charges 2 cents per 100 pounds and gets no business except when somebody makes a mistake. In other cities, the outbound switching from an elevator will be higher than inbound via the same line, probably on the theory that when a railroad switching grain out of an elevator it will not get a haul on it; but switching into an elevator its chances are better for getting an outbound haul.

In addition to these connecting line switching rates there [fol. 761] are intermediate switching rates frequently paid on grain. The Belt Railway's loaded car charge is $5.40 and the Chicago, Burlington & Quincy, and Indiana Harbor Belt is $5.40, and the Pullman Railroad, sometimes used, charges $4.00, I think. The Baltimore & Ohio Chicago Terminal is not used much, if any, as an intermediate line on cross town grain. Single line rates also vary, where switching is between two elevators or two industries on the same railroad. (Tr. 910.) There is considerable intra-plant switching, that is, from a private plant to a public elevator. (Tr. 910.) Future deliveries under contract usually occur in May, July, September and December, though recently, March deliveries have been established and considerable of this grain moves from private to public elevators, at times with very short hauls as the plants are close together. Intraplant switching of grain is the same as other freight, namely $3.15 per car. Aside from that single line switching will vary from $4.95, from $6.30, from $8.10 and up to $9.90 per car and with others with a 2¢ rate per 100 pounds. The volume of cross town switching in Chicago varies because of two factors; first, amount of high moisture content grain that is received on the Chicago market which must be dried, consisting principally of corn. Chicago is the largest corn market in the world and our receipts vary. Some years not more than 100,000,000

bushels and others, almost 200,000,000. The second factor is intraplant switching for public delivery and for public delivery where the plants would not be close together. (Tr. 911.)

In the last seven years, cross town switching of grain including intraplant movement is about as follows:

[fol. 762] 1921, 20,851 cars.
1922, 14,745 cars.
1923, 14,586 cars.
1924, 19,672 cars.
1925, 25,891 cars.
1926, 26,865 cars.
1927, 18,655 cars.

1925 and 1926 are rather heavy and chiefly accounted for because the corn was very soft and this market can take it and put it in merchantable condition better than any other. Our large grinding plants consume 30,000,000 or more bushels per year. In those unusually heavy public deliveries, there may have been a lively future market on future contracts. We have had at times in Chicago, 40,000,000 bushels of all kinds of grain in storage. Sometimes, as much as 10,000,000 bushels of 2 kinds of grain. The stocks in Chicago on Saturday, April 14, 1928 were 24,000,000 million bushels plus, over 15,000,000 being corn. (Tr. 912.) In the previous year on April 16, 1927, nearly 31,000,000 bushels were in storage, 22,000,000 of which were corn. Last Saturday, 19,000,500 bushels were in storage, 12,000,000 being corn. May 14, 1927, 27,000,000 and more bushels were in storage, over 19,000,000 being corn.

The local consumption in Chicago of all grain converted into something else will run over 40,000,000 bushels annually and some of that amount may be shipped out in road haul movement. Within my knowledge there is not a plant in the Chicago district handling grain or grain products where there is a foot of rail used exclusively for cross town switching. It is used interchangeably with road haul and the road haul will far exceed, taking all together, the cross town switching, and cross town switching either follows or precedes a road haul.

The effect on prices, due to increase in cross town switching rates, taking corn for example, involves futures. Corn, reaching the Chicago market, is sold and the prices, like those of other grains, are based on the future. (Tr. 913.)

[fol. 763] Future prices, of course, are looking ahead. Cash prices will not always be under the futures, they will sometimes be above them. If there was a shortage of corn today, and a little later, a good crop seemed in prospect, futures would be under the cash price because large quantities would not be available before the new crop. In the last two years prior to this crop, the soft corn came in in unusual quantities and this market, regardless of its size, probably got less good quality than smaller markets because the shippers send poor corn here because of the facilities for taking care of it which keep the price up. Discounting price too much on poor quality corn affects the better quality; and as our prices are broadcast, other markets regardless of location will pay just enough to take it away from us if they want it, depending on their locations. There are times when they will not pay as much but that is usually in a locality where a long distance haul to Chicago would be required and the grain might not carry so well. (Tr. 914.) Further referring to the corn situation, when soft corn comes in, I will use an elevator in the Calumet district for illustration which has complete drying facilities but not adequate to dry all the corn which it wants to take off the market daily, therefore, it orders its corn to other elevators, principally malt houses which are no longer making malt, one being the Columbia Malting Company on the Pennsylvania Railroad and the New York Central. I will use the Norris Elevator, located on the Pennsylvania. The latter will order that corn to the Columbia Malting Co., and have it dried. Every malt house has corn drying facilities. The corn will remain in storage until the quantity in the Norris Elevator is sufficiently reduced to permit it to take it in its elevator and save paying storage to the Columbia Malting Co. In doing that, the Norris Elevator has to pay [fol. 764] cross town switching. If that was raised to 3¢ per 100 pounds, the only thing the buyer can do is to take it off the price, because when he ships, he cannot sell it in New England or abroad or anywhere else for more than his competitor anywhere else can sell it for. (Tr. 915.)

Assuming the switching charge from the Columbia Malting Company to the Norris elevator is $6.30 on an 80,000-pound car of corn, and that is increased to $24.00, somebody besides the Chicago elevator must pay for it, because his margin of profit is now small. He invested his money in wet corn, paid to have it dried and to have it shipped to

his elevator. But when it arrives he cannot get a better price for it than anybody else, and he cannot afford to pay the prices now being paid if his crosstown switching is increased. This is true of the wheat man and the corn products man. Chicago switching prices are watched by every other market, and when prices here go down theirs go down also; and Corn Products Company will not pay more for corn just because it was switched crosstown than it would pay for corn it could get elsewhere.

The Belt, the Chicago, Rock Island & Pacific, and the Pennsylvania are the roads in the Chicago district having heaviest crosstown movement of grain. They switch between their industries, and the Belt is an intermediate line. (T. 916.) The Indiana Harbor Belt is a heavy intermediate switching line inbound, but not outbound, also the Chicago & North Western at its terminal elevator at Irondale, 118th Street on the Calumet River, with 9,000,000 bushels' capacity, about half of it public, and it does a great deal of switching in and out of that elevator; otherwise that road does very little switching of grain. The Chicago, Milwaukee, & St. Paul & Pacific, the Chicago, Burlington & Quincy, and Chicago & Alton do considerable switching of grain. Others doing small amount are Chicago River & Indiana, [fol. 765] Chicago Junction, Michigan Central, New York Central, Erie, Illinois Central, Nickel Plate, and the Grand Trunk. There are a few railroads not in that list which have no elevators on their lines; one being the Chicago Great Western and another the Soo line. The Wabash has an elevator but does no crosstown switching. It is located on the Chicago Junction tracks. All these elevators are in Illinois except that of the New York Central, which is in Indiana between Whiting and Indiana Harbor; the Standard elevator at Hammond on the Pennsylvania and Indiana Harbor Belt, and those of feed manufacturers mentioned who are located at Hammond. (Tr. 917.)

We do not criticise the movement of routes used in handling grain across town. The Belt Railway does a large business which it handles as promptly as any road-haul, but from these route sheets we think more classifications appear than were absolutely necessary, unless the cars of grain or products are in a drag and it would cost more to set them out than it would to take them along.

I notice this one where the Belt Railway classified a car at 22d Street and again at Clearing. This is not under-

standable, although there may be a reason justifying it. A good reason would be on the side of economy. The Belt Railway is really the extension of 13 other carriers, to which it is indispensable because each could not have its own switching line. The Belt's facilities are used to the greatest advantage of the 13 owners, 12 of which take their drags to Clearing and bring the cars back. The Belt does not do intermediate switching. It classifies at Clearing; that is, the Rock Island does not do it, as I understand. (Tr. 918.) The 12 others quite generally use the rails of the Belt, which fairly constitutes the Belt's rails as an extension of their own. In saying we do not criticise routes, the reference was to the movement of grain from elevator to elevator.

There were some roundabout routes used; one was shown [fol. 766] by Mr. Oliver, that went through Clearing when it might have passed through South Deering. (Tr. 919.) Another was where the Rock Island might have taken it through the Calumet & Western. But in general, if the carriers desire to handle the business the way they are now, and the service is satisfactory, we do not criticise that unless cost of doing it is advanced as a reason for increasing the rates charged. There might be different arrangements made, especially along the Calumet River, for the better handling of this business. The Chicago Junction rails, under trackage arrangements by some of these railroads, are used less than formerly in interchange. (Tr. 919.) Whether less than formerly is because of the increased business of the Chicago Junction, I do not know.

Using the Pennsylvania Railroad as an example, when it began the operation of its 108th Street yard, it served the Norris and Keystone elevators on the east bank of the Calumet River; but industries have since grown up, but before that came about the 108th Street yard was used for storage. These route sheets show that cars are classified at 108th Street when they are brought to or taken from Colo. I do not know whether or not that promotes economy, but to me it seems probable it is due to increased business, not only of grain, but other, and so is unavoidable; and if so, the increased business ought to more than take care of increased cost. It may accrue in these additional classifications. The Belt Railway classifies in its South District yard in addition to its South Chicago general yard. The South District yard was formerly used for storage to

some extent, and it avoided another classification. (Tr. 920.) The Indiana Harbor Belt sometimes has pretty slow service on crosstown business. At times three days elapse in moving a car via the Indiana Harbor Belt; and it would not get much overhead business if it took that time to handle that class of business all of the time. That adds further expense that is set up against crosstown movement, [fol. 767] as against overhead.

As to the switching of grain, and products to some extent, it is not a case of one car at a time, but the movement of a good many at a time, not only crosstown but road-haul mixed in with it.

A route sheet here, Chicago & North Western 104, Indiana Harbor 1358, purports to show movement of corn with 6 car numbers noted on the sheet from Chicago & North Western terminal to Corn Products Refining Company at Argo. The 6 are sample car numbers. (Tr. 921.) The Corn Products Refining Company must go into the market to buy storage grain. During September, 1926, it bought 1,000,000 bushels of corn at the North Western elevator, moving 446 cars from Calumet City to Argo without classification, and the Corn Products Refining Company is pretty certain they were not classified after reaching Argo. They were merely shoved in and the Belt Railway picked them up and set them. Cars of corn moving in drags of 65 to 70 cars should not have that cost based on a smaller movement.

Route sheet Belt Railway 796, Indiana Harbor Belt 1202, in Chicago & Eastern Illinois car No. 37333, moved from Calumet elevator to Robey through Clearing. The sheet shows first classification in South Chicago district yard, Clearing, then interchanged with Indiana Harbor Belt at Argo, and classified there; classified at Blue Island, at Calumet and at Burnham: 4 times on the Indiana Harbor Belt. (Tr. 922.) This car could have moved directly south from Calumet City to South Deering, around through Calumet City and Burnham, the same as in the illustration on page 22 of Mr. Oliver's Ex. 13. This one supports Mr. Oliver's statement or his illustration.

Before detailing switching rates on grain and grain products in other cities, it is true that the great consuming territory for grain and grain products is in Eastern sea- [fol. 768] board territory and Eastern trunk line territory;

but of course there are other sections consuming large quantities. (Tr. 923.)

Chairman Campbell: Why can you not put them in in the shape of an exhibit and introduce them in that form?

The Witness: Well, Mr. Commissioner, we were taken somewhat by surprise the other day. Mr. Galligan stated that the railroads intended to put grain on the Lowrey basis. Up to that time we had confined our exhibits to showing crosstown switching is paid and retained by the railroads and not absorbed. By the competing markets it is absorbed, sometimes by the inbound line and more often by the outbound line, which brings in the question of discrimination, and which also brought in the question of reasonableness of switching rates here versus other places.

Chairman Campbell: I thought I made it plain that we were not going to consider this question of discrimination, except perhaps as a mere incident. If there is discrimination in the increased rates there is discrimination in the rates you now have, and we cannot go into these outside rates to any great extent.

Mr. H. J. Campbell: If your Honor please, on that point the Commission itself brought in those rates; that is, the carriers proposed no increase, and if we are going into the matter on the Commission's request, it seems we are entitled to show the whole situation.

Chairman Campbell: You are entitled to show the level of the rates, and you might be entitled to show that the increase possibly might affect the degree of discrimination, but you are not entitled to show that switching rates which are charged for grain or grain products or any other commodity now, create a discrimination; only that it will increase that discrimination. (Tr. 924-925.)

Mr. H. J. Campbell: But here you have opened up the whole situation with respect to these rates, and I think we [fol. 769] are entitled to show just what we are working under in the way of discrimination under present rates.

Chairman Campbell: If there are only a few of these, I will allow you to put them in. If there are very many, I will require that they be put in in the form of an exhibit. About how many will there be, Mr. Brown? (Tr. 925.)

The Witness (continuing): Well, I was going to read a few at Omaha, Kansas City, Minneapolis and St. Louis. These points are not included in the Exhibits I have dis-

tributed because those are prepared to show cross town switching at other cities.

Mr. Davis: I do not understand how the commission under its general order of investigation in this case could make an order permitting us to remove discrimination if such exists at St. Louis, Omaha, Kansas City and Minneapolis and I cannot see that it has any bearing in this case.

Chairman Campbell: Mr. Campbell, cannot this matter be prepared in the shape of an exhibit to be filed later? I do not like to have rates read in the record because of no adequate opportunity to examine them.

Mr. H. J. Campbell: We will be very glad to do that, Mr. Chairman.

Chairman Campbell: Very well; We will permit Mr. Brown to prepare an exhibit to show a limited number of those rates.

The Witness: All right. (Tr. 926.) Minneapolis, Omaha and Kansas City were selected in this connection because, next to Chicago, they are the largest primary terminal markets in this country other than Duluth, but the latter situation is different from any of the others because it draws its grain, largely wheat and rye, from the Northwest [fol. 770] and ships largely 90% by lake, but the other four are in strong competition with Chicago. They watch Chicago prices and follow them and those markets, hedging their grain, making their hedging largely in Chicago, though to some extent in their own markets. It is quite vital that you know what the switching rates are in those other markets. Cross town switching at Omaha, Kansas City and St. Louis cannot be much different than here in Chicago, if any, and the reason for showing those rates is to contrast them with what we are paying or to show where they have a higher rate than we have, why theirs is higher and what is more important than anything else, that the shipper does not pay it. (Tr. 927.)

The first Exhibit No. 58, consisting of 9 pages is headed "Absorption of cross town switching charges on grain and grain products at East St. Louis, Illinois, St. Louis, Missouri, and Granite City, Illinois."

Exhibit No. 59, consisting of 4 pages, is headed "Absorption of cross town switching charges on grain and grain products at Louisville, Kentucky."

Exhibit No. 60, consisting of 3 pages, is headed "Absorption of cross town switching charges on grain and grain products at Minneapolis, Minnesota and St. Paul, Minnesota."

Exhibit No. 61, consisting of 8 pages, is headed, "Absorption of cross town switching charges on grain and grain products at Kansas City, Missouri, Kansas City, Kansas, St. Joseph, Missouri and Leavenworth, Kansas."

Exhibit No. 62, the one that Mr. Davis takes exception to is headed, "Extract of testimony of O. T. Cull of the C. M. & St. P. Ry., I. C. C., Docket 15,037." (Tr. 929.)

Exhibit No. 63, refers to some absorptions of the Terminal Railroad Association of St. Louis and consists of 2 pages.

Exhibit No. 64, consisting of 3 pages is a copy of a letter that I wrote in 1923 as Chairman of Shippers Section of [fol. 771] Chicago Switching Conference Committee to Mr. Byers, at the time Chairman of the carriers section and this particular exhibit has to do with the suspended rate in Galligan's Tariff 20 Series.

Mr. Davis: The Honor please, that is a self serving declaration and, of course, is never allowed to be offered as evidence. All these exhibits go to the one question as I understand it, that of discrimination claimed because carriers absorb at Louisville, Kentucky and do not absorb at Chicago, the latter is injured. Says the same regarding Minneapolis through these Exhibits and the same at St. Louis and at Kansas City. He offers the extract from the testimony from the Witness Cull in the grain case on the question of discrimination and what the rate should be on grain, now involved in Docket 17,000, Part 7.

The Witness: No, it is not.

Chairman Campbell: Do you claim, Mr. Brown that conditions are identical at all these other points with what they are in Chicago?

The Witness: Where you have cross town switching in any market, Mr. Commissioner, it would be because of a movement of grain from an elevator to a mill or gluten feed or bran from a mill to a feed manufacturer which would be identical with the movement cross town here and an additional cross town movement that would be grain moved from private to public elevators. That is all cross town in those other places, just as here. We pay it here and it is

never returned. These other places, markets with which we compete pay it and it is returned to them by one or more of the carriers. (Tr. 931.)

Chairman Campbell: Personally, I do not think they are admissable. I think probably they should not go in, but because I am only one of eleven, I am going to receive them subject to objection; that applies also to Exhibits 62 and 64. [fol. 772] (Tr. 932.) We will receive them subject to the objections that are made and if parties desire, they may urge those objections on brief and insist upon a ruling from the Commission. I believe that they are not admissible but other Commissioners may feel they should be received. Since they are from tariffs on file, I do not think the receipt can do much harm, so will allow them to be received except Exhibit 64. (Tr. 933-934.)

The documents offered, were received in evidence marked respectively 58 to 63, both inclusive. Witness Brown. (Tr. 934.)

The Witness (continuing): The charges referred to in Exhibits 58 to 63 inclusive are sometimes per car and sometimes per 100 pounds. Whatever elements of competition were or are bringing about these rates are not any different than they are in Chicago. They cover movements made exactly as made here; grain is switched after it has come to rest in an elevator or mill, or feed or flour or anything else.

At St. Louis is what may be called a transit proposition. Grain reaches St. Louis and may be switched for local or other delivery and the switching is absorbed and ends there. This may be done with products of grain. They may switch to East St. Louis where the toll bridge charge of the terminal railroad association is as high as 2¢ per 100 pounds, which is absorbed by the inbound carrier, thus giving transit from St. Louis to East St. Louis. (Tr. 935.) The Illinois Central, Wabash and the Chicago, Burlington & Quincy, by Tariff, I. C. C., 16848 referred to in Exhibit 58, provides for Illinois grain movement to East St. Louis and if the rate is 6½¢ per 100 pounds, or more, that grain, after reaching East St. Louis, may be switched to St. Louis and the 2¢ bridge toll is absorbed. (Tr. 935-936).

[fol. 773] All these Exhibits go to that point and all these railroads including Western and Eastern at Louisville, Cincinnati and Southern Railroads at Nashville have absorbed cross town switching that is not absorbed here. At Kansas City, outbound switching from an elevator by a road haul is as high as 2½¢ per 100 pounds, as the carrier feels it will get that much anyway and never get a further road haul; and it charges 2½¢, and if it does get a road haul it merely absorbs what it has already charged the shipper. If another competing railroad takes it out, it penalizes them by charging 2½¢. We have no cross town switching rates of 2½¢. We could not stand that. Our rates are per car which we pay and the carriers retain. (Tr. 936.) As to the reasonableness of this, taking transportation maintained at East St. Louis and St. Louis, it is switched across the river for 2¢, which is absorbed. This grain may reach St. Louis from the Missouri River, pay the regular rate of 13½¢ on wheat and 12¢ on coarse grain and thence shipped to Chicago, an additional 280 miles at an addition of 4¢ and the switching is absorbed. There has been talk of making our single line rate 3¢ or 2 line rate 3½¢ and our 3 or more line rate 4¢. In other words, an exception is made here. They would make us pay 17½¢ plus 4¢ for exactly the same kind of service. We would have an intermediate service here and St. Louis would get an intermediate service and other services.

Mr. Davis: Just a moment. That seems to go to the rate structure on grain as a whole throughout the country.

The Witness: No it goes to the reasonableness of what you say you intend to put in.

Chairman Campbell: He says it goes to the level of the switching rates in Chicago and that is what I take it he is testifying to.

[fol. 774] Mr. Davis: He is citing the proportional rate from the Missouri River here as compared to his proportional.

Chairman Campbell: I assume we are not going to consider that proportional rate outside of the Chicago district. My understanding was the witness stated that he was making the statement because it referred to the level of rates in the Chicago district. (Tr. 938.)

The Witness (continuing): What I am trying to show, Mr. Commissioner is if you want to consider the service

from St. Louis to Chicago as a cross town service they charge no more than 4¢ in addition to the rate into St. Louis and here they want to add on from 3¢ to 4¢ for a mere cross town service to make exactly the same delivery as would be made on grain products from St. Louis.

Chairman Campbell: We will adjourn the hearing until 2 o'clock P. M. today.

At 2 o'clock P. M., the hearing reconvened.

Mr. McCornack: I would like to enter my appearance for the Chicago Gravel Co., Walter E. McCornack, 1258 First National Bank Bldg., Chicago and also that of L. A. Berhle, General Traffic manager of that company.

Chairman Campbell: Very well, we will hear you later, Mr. McCornack.

J. S. Brown resumed the stand and testified further.

Direct examination continued by Mr. H. J. Campbell:

In some respects, cross town switching in Chicago on grain and grain products is similar to transit. At Western Lake ports like Duluth and Chicago, when grain comes to rest in elevators in those markets, it is on an even basis [fol. 775] so far as Lake transportation is concerned. (Tr. 939.) Duluth gets most of its grain from the Northwest, while we get more of ours from the Central West and Southwest, though some of the latter for which we compete, finds its way to Duluth either in the shape of flour or as wheat. In the Kansas City Board of Trade case and other Southwestern markets, the Commission established from Kansas City to Duluth, a rate but 1½¢ higher to Duluth than Minneapolis, expressly providing milling in transit at Minneapolis. This made an intermediate service at Minneapolis for the transformation of grain into flour with an additional 150 mile movement for 1½¢ per 100 pounds. It may move either as wheat or flour. That situation is substantially ours, where grain going into one elevator or a mill and the products or the grain moves to a lake elevator, where they want to charge us for a single line haul 3¢, for a haul of two or three miles.

In ex parte 70, the Commission, just before Federal control ceased, fixed the same rate from Omaha to Duluth as from Omaha to Chicago because the haul from Omaha to Duluth was substantially that from Omaha to Chicago though the short line distance from Omaha to Duluth was over two lines, while a short line distance from Omaha to Chicago was over a single line. (Tr. 940.) This was based solely on the question of service, assuming conditions and circumstances were the same to Duluth as to Chicago. The rate to Minneapolis was not changed and its rate was then and is now 1¢ less than to Duluth. Now that grain or products may move from Minneapolis to Duluth, 150 miles for 1¢, the only difference is that Minneapolis is farther from the lake than some of our elevators here. (Tr. 941.)

[fol. 776] If rates are made under that theory no two cities and no two industries in the same city would be on equality, because of differing costs over the differing routes or roads. The long line has always been required to meet the rates of the short line, sometimes by a distance 30, 40 or 50 per cent greater than the short line. Basing rates on cost would not permit that competition. Dealing with grain and the effect rates have on its price, rates must equalize as far as possible, not only in the same city, but as between cities and markets. (Tr. 941.)

Examiner Faul asked Mr. Haines why grain should not be on the Lowrey basis. Grain is not grown in Chicago. It comes here and until disposed of is part of the visible supply considered by the Government in its calculations and by the speculator, who is the chief factor in making future prices. Switching cost in Chicago cannot be considered alone. Consideration must be given to the entire cost of moving grain from origin point to port from which exported, or to point where consumed. From the beginning grain switching charges here have differed from those on other traffic, and those differences existed when the Lowrey agreement was made and the existence of lower switching rates on grain than on other commodities was not changed by the Lowrey agreement.

Examiner Faul: Mr. Brown, does the all-commodity basis apply in these other switching districts? (Tr. 942.)

The Witness: No, sir. They differ in many respects from switching charges on other freight, although they

have an all-commodity basis on other than grain in those districts. Connecting-line switching charges in other cities may about equal grain, but usually is higher, as in Minneapolis, where the reciprocal rate on grain is $1.80 per car, and crosstown movement $2.25 per car. Other freight will be higher than that. The practices here, and the reason for crosstown switching, are just the same as at these other [fol. 777] cities I have mentioned, considering Western cities only. And there is no charge to the shipper. It is absorbed. Our charge is not absorbed, and to that extent we are discriminated against and pay more for the same through service from point of origin to destination than our competitors pay. (Tr. 943.)

We feel in this general investigation the Commission should consider this discrimination against us, especially when dealing with practices here as against practices in other places relating to dealers, millers, maltsters and feed manufacturers engaged in the same business. It is not coal versus grain, but grain versus grain and grain products versus grain products. Though we have discussed absorption of crosstown switching at other points, all we ask now is that you let our rates alone. Although we are entitled to reductions if we can get them, what I mean at this time is that our rates should not be increased. If our rates are increased then the grain dealer and the miller in Chicago must be treated as they are elsewhere and crosstown switching here should be absorbed. On Saturday last it was announced that the terminal railroad at St. Louis had reduced its rates 10 per cent on some classes and 40 per cent on others, effective June 28th, claiming several million dollars saving annually to the shippers. (Tr. 944.) That is being done at St. Louis as against Chicago, but I do not know the commodities that reduction covers.

The proposed increases here started on iron and steel, and then the carriers brought in other commodities to bolster up their claims for iron and steel increases, and now they bring in grain to bolster up their claims for increases on the other commodities, to try and justify their rates under suspension. (Tr. 945.) I will stand on what I have said.

In his direct testimony Mr. Galligan did not mention bringing these other single-line exceptions up to the sus- [fol. 778] pended Lowrey basis. That first appeared in his

cross-examination. Grain rates are single-line rates. But the increases proposed would require us to pay two-line or three-line rates wherever that number of lines might be used. (Tr. 946.) At the request of the Board of Trade some of the elevators here have placed orders for empty cars for loading with the line serving the elevator, whether a switching or a road-haul carrier, regardless of whether or not the road-haul carrier might get a switch movement instead of a road haul.

It often happens that cars to the elevators, after unloading, will be coopered and hauled away empty, and other empties supplied to take their place. In a city the size of Chicago, if transportation costs are as claimed, regardless of American Railway Association rules, there should be some modification preventing carriers hauling away coopered empties and supplying new empties requiring cooperage, when the coopered empties are already at the elevator. Damaged grain doors could be replaced while the cars move from the unloading side to the loading side of the elevator.

In dealing with road-haul rates and the increase in minimum rates, I represent both the Chicago Board of Trade and Chicago Shippers Conference Association. (Tr. 947.) Supplement 8 to Galligan's I. C. C. 84, page 20, contains the vital part of the Lowrey agreement made in 1911, as it affects the flat Chicago rate to and from all industries in the district listed in Galligan's I. C. C. 108. The road-haul Lowrey agreement basis is in Galligan's I. C. C. 98, which provides minimum rate of 3 cents per 100 pounds, with minimum per car charge $19.00, out of which industrial and intermediate switching, if any, will be absorbed. The $19.00 charge is less than the two-line switching charge proposed of $21.00, or the three-line of $24.00, and in addition certain industries on the north and west sides, as shown by Mr. Haines, will be charged ½ cent more than the cross- [fol. 779] town switching rates. (Tr. 984.) The industries referred to today pay ½ cent above the present rates, which means $21.00 per car, though the present Lowrey basis for the road-haul for such deliveries is $19.00. In the tariffs suspended there are four railroads which provide for a minimum rate of 4½ cents, a minimum per car charge of $27.00, as against the minimum rate of 4 cents and minimum per car charge of $24.00 for all other rail-

roads. The four railroads which proposed these higher rates are the ones now charging the ½ cent-plus on crosstown movements to the north and to the west sides.

In 1923 we voluntarily offered the carriers a minimum rate of 3½ cents per hundred pounds, or ½ cent increase over the rate today, and to increase the $19.00 minimum car charge to $24.00, but they did not accept it. Prior to 1923 this matter had been discussed between shippers and railroads, and claim made that the $19.00 minimum car charge was rather low to permit industry switching absorption. (Tr. 949.) We agree that perhaps they were entitled to a little more money, and we would give $24.00 per car provided that charge included all industries in the Chicago district. In making this offer, if accepted, we thought the present single-line minimum charge of $15.00 would not be increased for road-haul, and no increase in crosstown switching, with a possible reduction of minimum from 60,000 pounds to 50,000 pounds. Some carriers, who charged the higher switching, were dissatisfied with the Lowrey basis because the amount they paid was based on 60,000 pounds, but freight charges they collected for road haul were on minimum weights less than that. (Tr. 950.) We thought we made a fair offer, but I do not think it was even considered.

These industries on the north side where the general switching rates in the district are plussed ½ cent, are shown in the Lowrey tariff by a prefix circle reference 3 and circle reference 36, which mean by these references that the Lowrey basis on Chicago flat rate basis will apply between those industries and points in Indiana, Ohio, Michi-
[fol. 780] gan, the Southeast, and all of Eastern territory, with a limited part of the Mississippi Valley; but freight originating in or destined to Illinois, Wisconsin, or any place in the West, the Lowrey basis does not apply. (Tr. 951.) The north side lines here under this get the full benefit of the Lowrey basis, the competitive base on the great big traffic and on south side, but they refused to reciprocate and open up their industries on the north side to their Western competitors.

If the Commission sustains the increased basis in the suspended supplements I. C. C. 84, we ask that it disallow the $27.00 minimum charge and the 4½ cents, and that it open up these north side industries on the Lowrey basis,

as was originally intended and as we requested or suggested when we offered the $24.00 minimum. (Tr. 952.) This would be fair to the shippers and to the other railroads, parties to the Lowrey basis. A route sheet of the Belt Railway on a cross town movement shows car moved empty by the Rock Island, back to the Chicago, Burlington & Quincy, through 12th St., and across the air line at a set up cost of $7.70. (Tr. 952.) The Belt Railways' individual charge for handling empties is $3.15 and the use of that road on this movement would have saved the Rock Island some money.

Exhibit 62 shows cross town absorption at places remote from Chicago and on carriers not reaching Chicago, such as Little Rock, Arkansas and the Missouri Pacific Railroad, for example. These references in the Exhibit are not to show that these non-servicing lines discriminate against Chicago, but to show the universal practice at other places in the event our alternative basis is approved; that is, if you permit increased charges that you will order the cross town switching absorbed. (Tr. 953.)

In the Exhibit you will find interior milling points in Kansas and Oklahoma competing with Kansas City, having their cross town switching absorbed. (Tr. 953.)

[fol. 781] Exhibits 58 to 63 were put in for the purpose of showing what we consider the reasonableness of the present rates. Reasonable to carriers because they keep what they collect and because if there is the same or less switching charge at some other place and it is absorbed, then all our charges, whatever they may be, are unreasonable to the extent that they are more than nothing. They were offered to show the propriety of the present rates and we ask that they either be let alone or that they absorb our cross town switching. (Tr. 954.) Cross town switching is the only traffic involved here which is switching between two industries within the Chicago district and Lowrey basis 20, which I speak of is also involved.

Cross-examination.

By Mr. Davis:

I did not say we did not object to placing grain on the Lowrey basis providing the carriers absorbed it. My statement was, if rates were to be increased then we

wanted carriers to absorb the switching, I think it silly to talk about putting grain on the Lowrey basis. On the North side in your own district, you would have a rate for a 3 line haul of 3½¢ or ½¢ less than the haul between here and Milwaukee. Even if absorbed by you, it is unreasonable. Grain destined to Chicago is held at some yard and samples taken to the Board of Trade where the grain is bought on sample and after purchased, the consignee gives order for destination delivery in Chicago, and it moves on the flat Chicago rate. (Tr. 955.) If the purchaser or if someone else later wants to move that car of grain across town to some other industry, the cross town switching charge I have been talking about will apply and is the charge I said should not be increased. (Tr. 956.) That shipment is still in the channels of trade as far as the grain business is concerned being considered in the visible [fol. 782] supply and has its effect on future prices. It is an independent movement and for that reason, I have never been willing to ask you to absorb it even though we knew you were doing it at other places.

Coal may be said to be not in the channel of commerce as grain is. The former is not given transit and grain is. The question is not as to what is done with other commodities, but what is done with grain generally at other places, and is the point that interests us. Crosstown switching is an independent movement but not disconnected from the fact that there was a prior road haul, with the possibility of an additional road haul, although there may not be one out of the Chicago district. (Tr. 957.) There might be from Buffalo on grain, for example. It may go out by water, and there is where we ask transit up to the lake elevators, just as transit is given from East St. Louis to St. Louis, and vice versa. If the charges are increased we want the inbound rate to put grain to the lake elevator, if it first goes to an inland elevator.

In my answer to Examiner Faul I meant that the other places had switching charges on grain different than on other commodities. (Tr. 958.) At St. Louis they have pretty much an all-commodity basis on 100-pound rates for transfer across the river, but did not mean there was just one rate in there on all commodities in these other cities. These other cities to some extent have a different rate on different commodities. I made reference to rout-

ing of empty cars back to the owning road, using the return by the Rock Island of a Chicago, Burlington & Quincy empty. I never could understand the economy of routing cars to the home road, because there is none. (Tr. 959.) I do not believe the owning road should have its cars returned to it at all times, when it sometimes induces the shipper to load its cars so that the carrier can get per [fol. 783] diem on them, which has been done in the Chicago district within one year. The road I do not care to name, but that practice does not go to every day in the year. (Tr. 960.)

But I mean there are times when grain and other commodities are loaded on Western railroads to go east, although contrary to American Railway Association rules, but the Western lines are willing to have these cars so loaded, as they have plenty of time and will obtain per diem on them while the car is off their roads. It is not my contention that a Chicago, Burlington & Quincy car unloaded at an industry should not be used by the shipper for a movement to New York, but we contend that a grain car already unloaded and coopered could be used again without the expense of switching the empty out. (Tr. 961.) That car ought to be loaded to run east. I said when Western cars are sent east it is contrary to American Railway Association rules, but do not criticise the Western road that lets its cars be loaded to points on other lines, but do not like to have you set up those costs for moving empties back when the shipper would load them if you permitted him to do so. (Tr. 962.)

Cross-examination.

By Mr. Connell:

For the $3.60 rate the New York Central delivers cars into the elevators that it receives from connecting lines; a switch from the connection to the elevator. The length of haul depends on where it gets the cars. It is as high as it ought to be, though outbound it charges more. It gets whatever outbound movement comes from grain out of your Indiana Harbor elevator that goes to another elevator; a switching movement. All rail movement of grain from Chicago eastbound varies with the seasons. (Tr. 963.) Some years it has been as high as 89 per cent, and within

recent years. Some years not over 60 per cent. I could [fol. 784] not give you the percentages last year or the year before that. I do not know them. Export grain moving eastbound from Chicago all-rail last year was mighty little; probably less than 3,000 cars, because the rates were higher than a cat's back and nobody could possibly ship all-rail for export and compete with foreign countries, and it was cheaper not only by water but all water to Montreal.

Any grain the New York Central brings in, going to an inland elevator, and from there to a lake elevator, would give a crosstown movement, which we ask you to absorb if the charges are increased. On a movement from a Western line to an elevator on the New York Central, if it gets the eastbound haul, we ask it to do what is done elsewhere, absorb the crosstown switching. That would not go out by water because the New York Central elevator is not on the water. The Baltimore & Ohio does not have an elevator, but the Pennsylvania has some good ones. (Tr. 965.) We would not ask for the movement of grain from the Milwaukee elevator to the Pennsylvania elevator and then ship by water. On such a movement however, they would get their switching revenue and that is all and would not ask its absorption by the Pennsylvania. We would ask the St. Paul if it brought the grain here, to absorb the switching to the Lake elevator. The Pennsylvania Railroad could publish low switching rates to their elevators because there is some grain switched and that goes all rail. The instance regarding the Norris grain company as to its soft corn which must be dried and cited by me; illustrates this situation. (Tr. 966.) The Columbia Malting Co., for instance, will dry the grain and it is then switched to the Norris plant and goes out over the Pennsylvania and some of it over the New York Central. It is not the possibility that the Pennsylvania will get this out bound haul that would induce it to publish low inbound switching rates, but the [fol. 785] actual getting of it is the inducement. It would not get any movement if the grain moved out by water.

Examiner Faul: Mr. Brown, does the Chicago Board of Trade favor the all commodity basis on commodities other than grain?

The Witness: The Chicago Board of Trade was one of the three parties signing the original Lowrey agreement

and no one knew then that a war would occur three years later that would put those charges up. It was all right then and it is all right now, provided it is not made so burdensome that it cannot be worked; (Tr. 967.) but there always were exceptions to it and it is proper that there should be exceptions to it on single line hauls but if it is going to be made so high that it is not workable, then I would not be for it.

Examiner Faul: Well, what are the exceptions that you refer to, Mr. Brown; on any particular commodities?

The Witness: Well, I could not say all of them offhand. Grain and grain screenings are and always have been notable exceptions, as well as single line hauls on stone, pig iron and things like that. There were good reasons for those exceptions which still stand and still more if the general Lowrey basis is to be increased. That will bring about more exceptions. The railroads would voluntarily make exceptions rather than kill off cross town switching which would kill off road haul as well. (Tr. 968.) As to zoning, a study of Mr. Haynes' map indicates it is an impossible thing. (Tr. 968.) The action of the North side lines in setting off certain territory, with higher switching rates, is zoning in a sense; but dividing the whole Chicago Switching District into zones and say one rate shall apply in a zone regardless of the number of lines is impossible [fol. 786] because of the way the railroads run. Take the car Mr. Oliver showed around through Clearing and back through Blue Island. That would pass through all zones there would be, but it should have gone down the West side of Calumet River and through Calumet City, back to Roby.

Chairman Campbell: But if it had been zoned, it probably would not have moved that way.

Examiner Faul: It would probably result in more direct hauling, would it not?

The Witness: Oh, if it was put in, it would result in more trackage arrangements being made. (Tr. 969.) There is no one talking about zoning unless it is someone who has got a selfish interest in it.

Cross-examination.

By Mr. Shank:

I said if they have an exception today on pig iron, there must be a very good reason for it and a still greater one

if the general basis is put up. There is no exception made in the case of pig iron that would not apply to brick. There should be an exception on brick also. There never was a water tight Lowrey agreement and it cannot be made so by increasing rates. The exceptions are all single line ones. (Tr. 970.)

J. W. BROWN recalled as a witness.

Direct examination.

By Mr. Keene:

The Graselli Chemical Co., at East Chicago, owns and operates approximately 20 miles of tracks at its plant there, of 80 pound steel and a value, less depreciation, of approximately $200,000.00. We have always maintained and paid all expenses incident to the maintenance of that track. There are 3 producers of sulphuric acid in the Chicago Dis- [fol. 787] trict. One is our company at Graselli, Indiana; the others are General Chemical Co., at Hegewisch on the outskirts of South Chicago and the Central Chemical Co., at Hammond, Indiana; (Tr. 972) and all located on the Indiana Harbor Belt, in the Calumet District. Tank cars used by our company in handling sulphuric acid are used to a great extent in switching service only. Many of our cars move back and forth in switching service from the time they are built until they are scrapped without earning more than a few cents in mileage during the actual life of the car. Sulphuric acid is such a cheap commodity that we have practically no long hauls and when used in road haul service they travel a comparatively short distance. (Tr. 973.)

Cross-examination.

By Mr. Davis:

Have been with the Graselli Co., 5 years and it is about the same size now as when I entered its employ. We have about 20 miles of track within the plant. (Tr. 974.)

Cross-examination.

By Mr. Barse:

These tracks were originally laid some years ago and new ones added as time went on and the old ones replaced.

In the last few years, we covered the whole plant and relaid the rail with 80 pound steel. (Tr. 974.) It was done gradually as our force could get to it and completed about a year ago. I cannot say the length of time it took to relay the tracks with the new steel. The $200,000 value I stated represents the value as of today. I do not have the cost of the original tracks. (Tr. 975.)

[fol. 788] L. A. BEHRLE, called in behalf of Chicago Gravel Company, was sworn and testified as follows:

Direct examination.

By Mr. McCornack:

Am general traffic manager Chicago Gravel Company, and prior thereto was assistant general freight agent of the Chicago & Alton Railroad. I have heard the testimony of the Chicago crushed stone shippers in this case, and have prepared some testimony in rebuttal to that given by them. Mr. W. J. Womer on direct examination testified briefly to different operations entering into the production of crushed stone and sand and gravel. He recited all of the preliminary steps with reference to the production of crushed stone and some as to gravel, but did not mention that gravel in a large measure requires crushing. (Tr. 978.)

With reference to rail shipments of stone by the Consumers Company within the district in 1926, they exceeded the shipments of 1925 by 10 per cent, but their sand and gravel shipments increased 24 per cent. Without separating sand and gravel these figures have not much value. They may be explained by the readjustment ordered by the Commission in 118 I. C. C. 633, and by Illinois Commerce Commission Increase 15878, which made comparatively slight changes in the rates from the Consumers Company sand and gravel pits, whereas substantial increases were made in the rates from our pits in the Joliet district on the E. J. & E. Prior to the revision under 118 I. C. C. 633 rates for single and joint line hauls to points within the Chicago district were from Algonquin, Illinois, 60 cents and 90 cents respectively; from Ginger Hill, Indiana, 69 cents and 88 cents respectively; and from South Beloit, Illinois, 65 cents and 95 cents respectively, applying to a ton of 2000 pounds.

[fol. 789] Under the revision the rate from Algonquin was 65 cents and 85 cents respectively; from Ginger Hill 70 and 90 cents respectively; and from South Beloit 70 and 90 cents respectively. (Tr. 980.)

Prior to the revision the rates from Plainfield were 50 cents and 85 cents respectively. Under the revision the rates from the three points were made 65 and 85 cents respectively. Maynard's Exs. 36 and 37 show that these changes affected the movement of stone within the district, because the entire movement of stone by all the companies named therein was, in 1926, 42,238 cars, and in 1925, 42,366 cars, or a decrease of 128 cars; while shipments made within the district in 1925 were 23,855 and in 1926 they were 27,216. They show, in 1925, that 56.3 per cent of all shipments moved to points within the district, while in 1926 64.43 per cent of the entire movement was to points within the district.

The Indiana Harbor Belt published a 40-cent rate on stone for intrastate movements between points on its line within the district, while its rate on traffic generally is 50 cents. (Tariff No. 325-F, I. C. C. 728, Illinois Commerce Commission 222.)

Chicago & Eastern Illinois, in its tariff No. 500-B, I. C. C. 167, Illinois Commerce Commission 135, publishes a stone rate from Thornton, Illinois, to industries served by it within the district of 40 cents, while its rate on commodities generally is 50 cents. (Tr. 981.)

Maynard's Ex. 37, page 1, shows ¾ of 1 per cent of Dolese & Shepard's shipments from McCook, Illinois, to the Chicago district were three-line shipments. This percentage may represent shipments upon which the three-line basis was applied, and not to shipments actually moving over the rails of three or more carriers.

Chicago & Illinois Western Tariff 520-D, I. C. C. 118-A, Illinois Commerce Commission 112-A, shows it has direct [fol. 790] connection with the Atchison, Topeka & Santa Fe, Baltimore & Ohio Chicago Terminal, and Indiana Harbor Belt at McCook; with the Belt, the Chicago, Burlington & Quincy; Illinois Central; and Manufacturers Junction at Hawthorne; with the Illinois Northern; Pennsylvania Railroad; Chicago Junction; Chicago River & Indiana at Western Avenue; and that it connects from an intermediate carrier with the following lines: Baltimore & Ohio; Chesapeake & Ohio of Indiana; Chicago & Alton;

Chicago & Calumet River; Chicago & Eastern Illinois; Chicago & Erie; Chicago & North Western; Chicago & Western Indiana; Chicago, Aurora & Elgin; Chicago Great Western; Chicago, Indianapolis & Louisville; C. I. & S.; Chicago, Milwaukee, St. Paul & Pacific; Chicago, Rock Island & Pacific; Chicago Short Line; Chicago, South Shore & South Bend; Chicago, West Pullman & Southern; Cleveland, Cincinnati, Chicago & St. Louis; Elgin, Joliet & Eastern; Erie; Grand Trunk; Michigan Central; Soo Line; New York Central; New York, Chicago & St. Louis; Pere Marquette; Pullman; and Wabash. (Tr. 982-983.)

Shipments of crushed stone in Ex. 37 moving to the district from McCook are not divided among the shippers from McCook; but the total of shipments of the Baltimore & Ohio, the Chicago & Alton, Chicago & Calumet River, Chicago, Indianapolis & Louisville, the Chicago, Milwaukee & St. Paul, the Chicago & North Western, Chicago & Western Indiana, the Erie Railroad, Grand Trunk, Michigan Central, Soo Line, New York Central, the New York, Chicago & St. Louis, and Wabash lines (with which the Chicago & Illinois Western does not connect directly, but to the industries located thereon to which the two-line basis of rates is applied under the provisions of Galligan's I. C. C. 63), is 5,392 cars. Deducting this from total of all two-line shipments by other producers at McCook, namely 8859 cars, which I determined by applying percentages to the total number of district cars indicated on page 1 of the exhibit, we find that Dolese & Shepard must have shipped at least [fol. 791] 1533 cars which moved over three lines, instead of 63, which is ¾ of 1 per cent of 8401 cars. (Tr. 983.)

Tariff I. C. C. 89, under suspension, proposes to continue the two-line basis of rates from industries on the Chicago & Illinois Western to these lines with which it does not have direct track connection, but with which it interchanges traffic through an intermediate carrier.

Mr. Womer states that the district quarries are located along the outer rim of the Chicago district. It would be fair to say that with one exception the boundary line of the Chicago district was run around the quarries, rather than that the quarries happened to be within the line. (Tr. 984.) The map, Ex. 6, shows the boundary line has been run from the line of the Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt so as to embrace the entire line of

the Chicago & Illinois Western. Practically all freight originating in that section is stone, and the railroad referred to on Ex. 6 is the Chicago & Illinois Western, which hauls mostly crushed stone. (Tr. 985.)

By referring to Ex. 6 it appears that the Brownell quarry is not located within the Chicago switching district. Taking Harvey, on the south central part of the map, you will find the Baltimore & Ohio Chicago Terminal leaves the confines of the district just southeast of there, and then runs south, and from a spur it serves the Brownell quarry outside the district. This quarry is shown as located at Thornton by Mr. Womer's and Mr. Maynard's exhibits. (Tr. 986.) Baltimore & Ohio Chicago Terminal Tariff, I. C. C., 145, and Galligan's Industry Directory, I. C. C., 47, Illinois Commerce Commission 108, lists Brownell Quarry as located at Harvey and according to Baltimore & Ohio Chicago Terminal Tariff, I. C. C., 311, is four miles from Harvey, that is, the Brownell quarry is at Thornton, 4 miles from [fol. 792] Harvey. It is because these shipments are billed via the Baltimore & Ohio Chicago Terminal as from Harvey although originating at Thornton that causes application of the Lowrey agreement rates from Brownell quarry at Thornton to points within the district. The rate from Thornton to Chicago District is 50¢ (Tr. 987) and generally speaking, shipments Southbound from Thornton take the Chicago rate, but there are instances where Thornton rates Southbound are less than the Chicago rates; some lines carry them on the same basis as Lehigh going South. The purpose of my testimony was first to clear up the record as I thought it should be and because this is a general investigation, the Commission should know all these exceptions made within the District. It is not to be understood, however, that I think these irregular treatments are wrong but they demonstrate to my mind that the Chicago stone dealers have been given what we are asking from Joliet—a parity of rates for the Chicago District. (Tr. 988.)

Cross-examination.

By Mr. Womer:

I do not regard the plant of the Chicago Gravel Co., as typical of those in zones 1, 2 and 3. While with the Chicago

& Alton Railroad, we served one of those plants and a similar one at Joliet and I gained a good idea of the difference in the gravel plants. In the operation of gravel plants, I have had no more experience than you have had. The Chicago Gravel Co., has 4 plants. I think the pits of the Consumers Co., have been given a very preferential basis of rates located in the same zones with other pits; (Tr. 989.) From their pit at Ginger Hill, and the one at South Beloit. Ginger Hill is in zone 2 and I believe you are 90 miles out, with a rate of 70¢ single lines and 90¢ for a joint line. Ginger Hill has a zone 2 basis of rates, South Beloit is in the same zone and has no different rate than any other pit in zone 2. I may have misunderstood you and I do not [fol. 793] want to leave the impression that the Consumer Company's pits are treated any differently than like pits in zone 2. (Tr. 990.) The Dolese & Shepard quarry is on the Chicago, Illinois Western. I could not say that it is closer to the intersection of the Indiana Harbor Belt and the Atchison, Topeka & Santa Fe, as shown on exhibit 15 than it is to Gary, Illinois. It might be closer to the intersection than to the station shown at Gary and if you say it is, I will take your word for it, Mr. Womer.

I do not know if the Indiana Harbor Belt publishes any 40¢ rate applying locally on its line in Illinois, other than crushed stone, but generally, the rate on commodities is 50¢. (Tr. 991.) I do not know the number of exceptions there are to the so called general rate. Indiana Harbor Belt Tariff 325 G. in section 2, appears to provide a rate of 2¢ per 100 on traffic subject to column 1 and 2¢ on traffic subject to column 2 between stations index No. 1 to 22 inclusive, minimum weight 100,000 pounds. Column 1 covers traffic between stations on the Indiana Harbor Belt except as shown in column 2. Column 2 applies on traffic on the Indiana Harbor Belt and junctions with connecting lines. The rate on grain is 2¢ with reference mark. (Tr. 992.)

Redirect examination.

By Mr. McCormack:

My statement that the Indiana Harbor Belt has published a general commodity basis at 50¢ is correct. (Tr. 994.)

A. A. ADAMS, duly sworn, testified as follows:

Direct examination.

By Mr. Walter:

Am chairman of the traffic committee of the Chicago Retail Lumber Association and traffic manager of the Edward Hines Lumber Co., and associated interests. The Chicago Retail Lumber Dealers Association is comprised of about [fol. 794] 135 yards, operating in the Chicago Switching District and according to the Lowrey list of industries there are 258 such yards within the district. (Tr. 996.) They are somewhat scattered throughout the Chicago District as a whole. The car load movement of lumber and shingles into the Chicago District for 1926 was 224,891 cars coming largely from the head of the Lakes, the Pacific Northwest, California, the Southwest and the Southeast blanket territories. For the yards I speak for, the intra district movement is between 4,000 and 5,000 cars per year and we do approximately 75% of all the total business. (Tr. 997.) The reason there is not a greater intra district movement is because of the so called transit cars moving from all producing regions which are not sold, and have no ultimate destinations but some reach Chicago and are sold on or after their arrival.

There is quite an extensive truck movement of lumber within the district. Approximately 80% of the total; but no district movement by water. (Tr. 998.) Lumber movements within the district pay 2½¢ single line, 2½¢ for 2 line and 3¢ for 3 line per 100 pound-, minimum 60,000. (Tr. 998.) There is a plus basis of ½¢ over 3¢ to two deliveries on the North side on the Milwaukee and the Chicago & Northwestern and the West side deliveries on the Soo line and Chicago & Great Western. To points in the Southern end of the district there is one rate of 5¢ on business moving in connection with the Elgin, Joliet & Eastern to South Chicago, but it moves outside the district to get in Chicago, traveling through Kirkyard at Gary. The North side plus rates are those shown in the Haines Exhibit in the colored section of the map. If the proposed increases become effective, it will help to increase the transit car situation and likewise take up the slack, the balance in trucking of such shipments to destinations in the Chicago district; it will

reduce the volume of switched lumber. The intra terminal [fol. 795] movement in car loads is caused through the question of price and competition with the transit car and some times a demand for an assortment of lumber that can only be supplied by the local yard. (Tr. 1000.) Lumber is sold in the Chicago District on a contract basis covering deliveries over a definite future on a delivered basis and on that lumber, the lumberman would have to stand the increases if effective, until the end of his contract and the question of competition would determine whether he could pass that on in his subsequent sales.

Where cars are switched within an industry and unloaded and not reloaded, they would have to be pulled out empty but where such cars are coming in under a load are available for out bound load, it would have a tendency to reduce a part of the cost and take up some of the slack of per diem or detention charges in the Chicago District. We have some local shipments not loaded to 60,000 pounds because of the peculiar nature of lumber its different sizes will not permit the loading of box cars as fully as we would like to load and we are not able to use the cubical capacity of the car to get the 60,000 minimum. (Tr. 1001.) And then, too, the road haul cars have minima that vary. From the Pacific Coast is a cubical minimum subject to declared full visible capacity, and some where actual weight is declared. On movements from the head of the lakes and from Southern and Southwestern territories the going minimum is 34,000 pounds on lumber in any size cars.

A list of 258 yards does not include box factories, planing mills, sash and door plants, or piling and poles, and these would be an additional movement of which I have no record. (Tr. 1002.)

[fol. 796] Cross-examination.

By Mr. Davis:

We ship a few cars in under transit in the district. Sometimes for a special job or a special grade requiring two or more cars of lumber we have that shipped from whatever point of origin to that job, depending whether it is the mill price or the Chicago price. We own a fleet of trucks which haul our lumber to both small and large jobs. (Tr. 1003.) They will handle about 5,000 feet to a truck and trailer,

and the weight depends upon class of lumber. Lumber weighs from 2 to 3 pounds per board foot. At 2 pounds the 5,000 feet would be 10,000 pounds, and 3 pounds 15,000 pounds. It would run around 5 tons. Two men operate the truck. It would take approximately 6 trucks to haul the equivalent of a 60,000-pound car. (Tr. 1004.)

Redirect examination:

Generally lumber has to be unloaded from the car and then moved by truck to the job, but the movement is usually into the pile and from there by truck to the job. By moving from the pile direct we save a good part of the switching movement.

Recross-examination.

By Mr. Davis:

The truck movement is usually based upon jobs where certain lumber is required to take care of immediate needs. To a box factory and to small jobs it is shipped very hurriedly. It is a matter of time with the trucking. (Tr. 1005.) In cases where we ship lumber from our plants within the district it is not always because we can do it cheaper than by truck. Due to the peculiar nature of the lumber business there are instances where certain items can be delivered cheaper than others, by truck, than they can all car, and others cheaper by car than by truck. We can ship to the Inland Steel Company cheaper by car than by truck, and in the Calumet district because of the distances in-
[fol. 797] volved. (Tr. 1006.) Distances have a great deal to do with trucking cost element. We can load direct from the lumber pile on to the truck and deliver at the job, and I stated to Mr. Walter that nearly always we had to put it on the pile anyway. But there is a certain percentage loaded direct from cars in the yard. Because of the nature of the lumber you cannot always go direct to the truck. It is the assortment of the lumber in the car that may prevent unloading directly to the truck. (Tr. 1007), and there may be different items involved in each truck load going out. I do not know of any cars from our yards that we could have delivered more cheaply than by truck. The lumber interests favor the all-commodity basis in the Chi-

cago district and are satisfied with present rates. (Tr. 1008.)

R. E. RILEY was sworn and testified as follows:

Direct examination:

Am traffic director of the Chicago Brick Company and the Lake Sand Corporation. Have been engaged in railroad and industrial traffic service since 1897. The Chicago Brick Company is an Illinois corporation and since 1887 has manufactured common brick. It has a single plant in the southern extremity of Chicago, being partly in Chicago and partly in Dolton, Illinois. The billing station is Riverdale, served only by the Baltimore & Ohio Chicago Terminal. Our interest in this proceeding is the carriers' proposal to make different rates for one- and two-line hauls. At the present and for a number of years past, with but few exceptions, common brick rates for one- and two-line hauls are and have been the same from all rail shipping plants in the Chicago district, and the industry has adjusted itself to that basis and will be best served by a con- [fol. 798] tinuance of it. (Tr. 1009.) It placed all producers on a parity of rates, affording consuming interests numerous sources of supply. The Chicago Brick Company, with 6 others, constitute the Chicago Brick Exchange, which membership includes all but one of the common brick manufacturers operating plants in the Chicago district. Our company in 1927 burnt 73,077,000 brick. Forty-six per cent was delivered to the railroads and 54 per cent was trucked direct from kiln to job. Very little brick is used by the industries listed as such in Galligan's directory. It is mostly consigned to outlying team tracks and trucked therefrom to the job under construction. Truck deliveries run from 10 to 15 miles. We employ contract trucks of about 16,000 pounds capacity.

In the test period August 4 to 10, 1927, we shipped 26 cars to points in the Chicago district, 18 being joint-line hauls and 8 for deliveries made by the Baltimore & Ohio Chicago Terminal. We shipped 104 cars September, 1927, 69 of which were joint-line hauls and 35 single-line. (Tr. 1010.) If higher rates on two-line than on single-line hauls are permitted on lines other than the Baltimore & Ohio

Chicago Terminal, we will be at 10 cents per ton or 20 cents per thousand brick, disadvantage on our shipments, compared with producers having plants on other lines on which we now have customers.

Oliver's Ex. 13, page 17, shows brick moving from Chicago Brick Company to Reiner Material Company on the Pennsylvania Railroad. In 1927 we shipped to this particular location approximately 550 cars.

The Illinois Brick Company has a plant located at Bernice, also outside of the Chicago district, but with a 2½ cent rate for single-line deliveries on the Pennsylvania Railroad. If the proposed rates become effective Bernice will have 3 cents to the Reiner Material Company, while our rate for a two-line haul will be 3½ cents. We cannot [fol. 799] afford to lose such valuable business, and if the increased rates become effective we will substitute truck service for rail carriers. (Tr. 1011.) Based on 27 rail shipments, truck substitution would affect at least 1150 cars. Average car loading of 35 tons at 50 cents means revenue loss of $17.50 per car, or annual loss of $20,125.00 on the business that will move by truck. Some members of the brick exchange have 100 per cent truck delivery, and at present the differential between all-truck delivery and rail-and-truck delivery is very small. If rail rates are increased the companies now using the rail service may be compelled to substitute truck service entirely; and if this is true with respect to common brick, it would more likely follow with higher-value commodities, because they can afford higher trucking costs.

A company on the west side in which I am interested imports burlap and manufactures textile containers, and has a cartage contract which figures $2.00 per ton for deliveries all over the Chicago district, regardless of distance. (Tr. 1012.) We have quite a business at Hammond and Gary, Indiana, delivered at the rate stated. Retail companies in the Chicago district have free delivery service extending in a radius of approximately 40 miles from Chicago. These conditions indicate that Chicago switching district rates are probably as high as they can go, and if increased, loss in revenue through truck substitution will necessitate still further increases on the remaining switching traffic. As to extension of Chicago switching district limits, we feel that this has even now been over-

done. Existing plants in the district are adequately equipped to supply the demands of the city and its environs, and we see no reason to accord brick manufacturers at outside points rates even remotely associated or identified with the switching rates.

Cross-examination.

By Mr. Walters:

The members of the Chicago Brick Exchange are in har- [fol. 800] mony with the existing basis, and have never made complaint as to existing rate structure in the Chicago district. (Tr. 1013.)

Cross-examination.

By Mr. Davis:

We feel there should be no relation between rates within the district and those without. I wish to adopt for our company and the Chicago Brick Exchange the testimony of Mr. Brown regarding the physical features of operation, but as stated by him, we do not load around 100,000 pounds because the Baltimore & Ohio Chicago Terminal is supplied with cars by the parent company which have a capacity of 60,000 pounds, our average loading being something less than 70,000 pounds. We have two men on the contract trucks. It would take about 5 or 6 trucks to haul the equivalent of a carload of brick. (Tr. 1014.) The men on the truck are paid $7.50 each per day. As I stated, very little brick is consumed at any of the locations listed in the Lowrey tariff. The construction is usually away from those, which necessitates team track deliveries, if available, and truck service from that point. (Tr. 1015.) It may be the job is located 5 miles from the team track and 15 miles from the kiln, and the initial expense is not materially different whether we send a truck 5 miles or 15. We do not always ship by truck where it is cheaper than handling in carloads. There are circumstances which necessitate a delivery of great quantities of brick at a particular location, which may only be accomplished by car service. That is one consideration which may influence rail shipments. In fact, we are now shipping 46 per cent of our business by rail, while certain other members of the

exchange are using 100 per cent truck service. (Tr. 1016.) From an economy standpoint my conjecture is that if the increases become effective the truck movement will become 100 per cent, because it is 100 per cent with respect to certain members of the Brick Exchange.

[fol. 801] Cross-examination.

By Mr. McCornack:

We have competitors outside of the Chicago district, the Illinois Brick Company plant at Bernice. It is possible that we have the same rates outbound as Bernice. It would not be proper to relate our rates to Bernice on outbound shipments if it is not related to ours on inbound shipments. (Tr. 1017.)

Cross-examination.

By Mr. Shank:

The National Brick Company is not a member of the Chicago Brick Exchange. The two plants using 100 per cent truck delivery at this time are supporting the position of the Chicago Brick Exchange that I am taking here, regardless of the fact that they are on a 100 per cent truck-movement basis, because that is a transitory condition, as one of them is now building a rail shipping yard. (Tr. 1018.) That does not affect the present situation of the two companies, but it shows what a man may have in the back of his head. (Tr. 1019.)

The Lake Sand Corporation is an Illinois Corporation which, since 1923, has produced and distributed Lake sand. Its principal equipment is the steamship Gilbert, a centrifugal dredge of 1,108 gross tonnage. During navigation, its potential production is approximately 400,000 cubic yards of sand, the production in 1927 being 350,000 cubic yards of sand used principally in building and paving operations. (Tr. 1019.) The Company maintains a material yard at 3116 N. Campbell Ave., another on the South branch of the Chicago River, 2501 S. Ashland Ave., and a 3rd at 95th St., and the Calumet River, in South Chicago; the latter being the only one making rail shipments through the Ashland Ave., yard has rail connections with the Chicago, Burlington & Quincy Railroad, over which ship-

ments could be made. From zone 1 points, the sand rate [fol. 802] into the Chicago District is 65¢ per net ton single line hauls. Sand suitable for building and paving operations is produced on practically every road-haul line entering Chicago. The proposed increase in rates from our South Chicago yard requiring 2 line hauls (Tr. 1020) will compel our corporation to meet the 65¢ rate with concurrent 70¢ rate from its 95th St. yard, although producers of outside sand have been accorded a 50 mile rail haul in addition to the expensive terminal service in the Chicago district. To do this, we will have to open additional truck yards in the Chicago district which are available on the Chicago river and on the Water ways in the Calumet region. (Tr. 1021.)

The establishment of the 65¢ rate from zone 1 by the Commission may have been based on the present relative basis of rates in the district. But if so, it was a mistake, as line haul rates should not even be remotely associated with rates in the Chicago Switching District, as that would destroy the geographical advantage of Chicago industries, having substantial capital investment in the district through subnormal or abnormal rates. (Tr. 1021.)

Cross-examination.

By Mr. Atwood.

Our sand by boat is ordinarily obtained off the Indiana shore and a very considerable amount brought to our South Chicago yard for rail shipment, which goes both to the Illinois and Indiana portions of the district. That moving to Illinois points is treated as intrastate. (Tr. 1022.)

Cross-examination.

By Mr. McCornack:

Our competition with gravel, is only in this sense as the ratio of a particular job may call for 2 parts gravel, 2 parts sand and 1 part cement and the job permits a greater increase in the amount of fine aggregates used, then we do [fol. 803] compete with gravel. We ship sand out of the district and compete with producers of sand but not on the same level of rates as theirs, as our rates outside the district are probably the highest sand rates that can be

found in the United States. We compete with the Chicago Gravel Co., at Joliet and we have the same rates to Michigan City; (Tr. 1023.) and probably the same to some points on the Burlington. We do not generally have the same basis of rates as our competitors outside the district. From Joliet to Ottawa, the rate is less than from Chicago to Ottawa, a point 85 miles Southwest of Chicago. It is hardly correct to say that within a 40 or 50 mile radius from Chicago we have the same rates as our competitors. The basic rate into Chicago from a 50 mile point is 65¢ and for 100 miles, 75¢; none of our outbound rates from Chicago for such distances approximate those figures. (Tr. 1024.) Ours are considerably higher.

Examination by Mr. Walter:

We do not ship sand to Michigan City because the same kind of sand is produced off shore there that we get out of the Lake and the relation of rates to Michigan City is of no interest to us. (Tr. 1025.)

Recross-examination.

By Mr. Atwood:

A very considerable amount of our sand is suitable and used for paving work for top dressing, the surface dressing of the road, which is mixed with cement in a coarse aggregate which is what lake sands are generally used for. Out of 140,000 tons moving from South Chicago last year, 98,000 tons of this sand were used in construction work but could not say that this was all paving work or involving the use of concrete. (Tr. 1026.) Our sand is nearly 100% finer than 20 mesh and under some specifications, such [fol. 804] fine sand is not used in concrete construction work. Whether our sand competes with others in a particular use or not we think is immaterial, the main question is as to its competition in any sense. Prices demanded for outside sand materially affect those demanded in the district as a whole and as stated by Mr. Haynes, Chicago is being used as a dumping ground and we think the investment of operators in the Chicago district should be protected against outside interests. (Tr. 1027.)

Recross-examination.

By Mr. McCornack:

Approximately 90% of our sand shipments through the South Chicago yard, our only rail shipping yard, move to points in the Chicago district, 80% of them being 2 line hauls. (Tr. 1028.)

C. W. GALLIGAN, recalled as a witness, further testified as follows:

Direct examination.

By Mr. Davis:

Answering one of the questions propounded by the Chairman, which in substance asked, what exceptions, if any, the different carriers proposed to make to the present basis of rates on certain commodities, if any, and both with reference to the rates under suspension and those not under suspension but which are involved in the general investigation, (Tr. 1029.) I am authorized to say: Carriers propose to increase all switching charges between points in the Chicago district as defined in Galligan's Tariff 21 Series, to a minimum of 3¢ per single line, 3½¢ for 2 lines and 4¢ for 3 or more lines, minimum 60,000 pounds per car. All rates now higher than the general basis to be advanced in the same amounts as proposed in the general adjustment. Arbitraries now existing above the general basis will be continued in connection with the carriers' proposals. Rail-[fol. 805] way equipment rates in the Chicago district now existing on the per car basis are to be increased relatively with the increase in the general basis. The exceptions to the foregoing are: The Illinois Central desires to continue two exceptions, one on tar and the other on refuse materials; the position of that road will be definitely stated by its representative, together with the rates it desires to continue on these low grade commodities and the refuse materials. (Tr. 1030.) And there is one exception in the case of the Chicago Junction shown on page 14, which it will possibly want to continue and if so, its representative will so state. In response to the request of the Chairman, sup-

plemented by that of Examiner Faul, I have prepared a statement of all the exceptions to be made to the general basis in the I. & S. proceedings involved here together with a statement with what we proposed to do with the rates under the general investigation docket, which is Exhibit 64 offered and received in evidence, marked "Exhibit 64, Witness Galligan." (Tr. 1031-1032.) There are one or two corrections that I want to make in that Exhibit, page 14, item 415, reading "all commodities 60,000 pounds from all Chicago Junction stations to all Chicago Junction stations, 2½¢ per 100 pounds" should carry the note "except between locations in a single district (intra-district) in railroad cars $7.15 per car, in private cars $3.15." We do not propose under I. & S. Docket 2900 to increase the Chicago Junction single line rate. The Exhibit is made to show the exceptions to the general basis now in effect and whether or not it was proposed to change that under the I. & S. Docket. The general statement I read a few moments ago was in response to the request from Commissioner Campbell for a complete statement of the carriers' [fol. 806] proposal in this case which includes the general investigation and under the general investigation the statement covers all roads unless they except thereto such as the Illinois Central or those who will make an exception. (Tr. 1033.)

Page 15 of Ex. 64, item 435, in the second bracket, reading: "To stations on Chicago Junction, $4.50 per car," should carry an exception reading: "Between locations in a single district, $3.15 per car."

I have no recollection of saying if the shipping rates within the district as presently proposed for the one-, two- and three- or four-line hauls became effective, that the carriers on the north side would wipe out the plus charge, and I have no authority to make such statement, nor do I recall that I ever wrote a letter to that effect. (Tr. 1034.)

Cross-examination.

By Mr. Behrle:

As to item 1020 on page 37, we show there is to be no change in the rate on crushed stone from stations on the Chicago & Illinois Western to points on the Atchison, Topeka & Santa Fe, the Baltimore & Ohio, the Indiana Har-

bor Belt, etc., but that exhibit was offered to show exceptions to the rates in the district now in effect and what was contemplated in connection with I. & S. Docket No. 2900; but the general statement deals entirely with the general investigation docket, and under that we propose a change unless individual lines make exception thereto. (Tr. 1035.) In the tariffs under suspension the rate shown from Chicago & Illinois Western to the Santa Fe or the Baltimore & Ohio is the proportional rate to the Santa Fe. It is not "Stations on the Santa Fe." It is the proportional rate to the junction.

Cross-examination.

By J. S. Brown:

In the general investigation it is proposed to increase [fol. 807] all items in Ex. 64 to 3 cents, 3½ cents and 4 cents per hundred pounds for the respective hauls interstate and intrastate. (Tr. 1036.) On page 6 of the exhibit, item 170 reads: "Grain, applicable on traffic moving wholly within the district; grain, applicable on traffic destined to points beyond the district, proportional rate to the connecting lines," and says: "Interstate elevator to junction with connecting lines."

Q. Do I understand from that, Mr. Galligan, that the Erie Railroad, if it switches a car of grain say to the Pennsylvania or any other railroad to go east, will charge the Pennsylvania Railroad 3 cents per hundred pounds instead of $8.10 per car as it does today? (Tr. 1037.)

The Witness: This statement, it seems, I have got to explain once more; shows the present basis and what was proposed under I. & S. Docket 2900. Under that Docket no change was proposed in that rate. No rate is published and filed, and no suspension, that affects that item at all.

The general statement shows all rates within the district carried in 21 and in the individual issues will be advanced to 3 cents single-line, 3½ cents two-line, and 4 cents three or more lines, minimum 60,000 pounds. As to the item you mention, no exception was made by the Erie Railroad when they sent their man to work up these figures. (Tr. 1038.) There is nothing in this record showing proposal to change this item in I. & S. 2900, and if that is an item connected with an outbound road-haul movement it

will not be affected by the general statement within the district. My statement is intended to apply only to movements within the district, and it may be true that we have items in the exhibit in under the general investigation. (Tr. 1039.)

The meaning of the word "intradistrict" shown in item 415, page 14, Ex. 64, I do not know, but I understand that [fol. 808] the words "single district" mean down in the stockyards district, served by the Chicago Junction and divided into several districts, having per car district rates applicable between two industries in any one district, and a higher rate applicable between a point in one district and a point in another. (Tr. 1041.) It is just a small zone there and is in the nature of an intraplant proposition, as the explanation was made to me. They said it was the same as an intraplant movement, and it was not contemplated to change intraplant rates in the district.

Mr. Connell: It is practically an intraplant movement, Mr. Kean. (Tr. 1041.)

The Witness (continuing): The basis of my exhibit consists of the present as well as proposed rates in I. & S. 2900, and is supposed to be a complete statement of the exceptions to the general basis of rates now in effect in the district and what was proposed under I. & S. Docket 2900, though there may be some exceptions not checked in by the individual carrier's representative. (Tr. 1043.) I did not say if there is any commodity now taking less than the Lowrey basis and not contained in the statement, that it is not proposed to increase it. The statement made in connection with the general investigation was, "It is proposed to advance all rates to 3 cents single-line, 3½ cents two-line and 4 cents three or more lines, minimum 60,000 pounds." It is possible I may have left something out of that statement and as to which increases were proposed in I. & S. 2900. This can always happen in making a hurried check. (Tr. 1044.)

Redirect examination.

By Mr. Davis:

In offering this exhibit I speak for the roads, parties to my tariff that is under suspension. (Tr. 1045.)

Recross-examination.

By Mr. Knowlton:

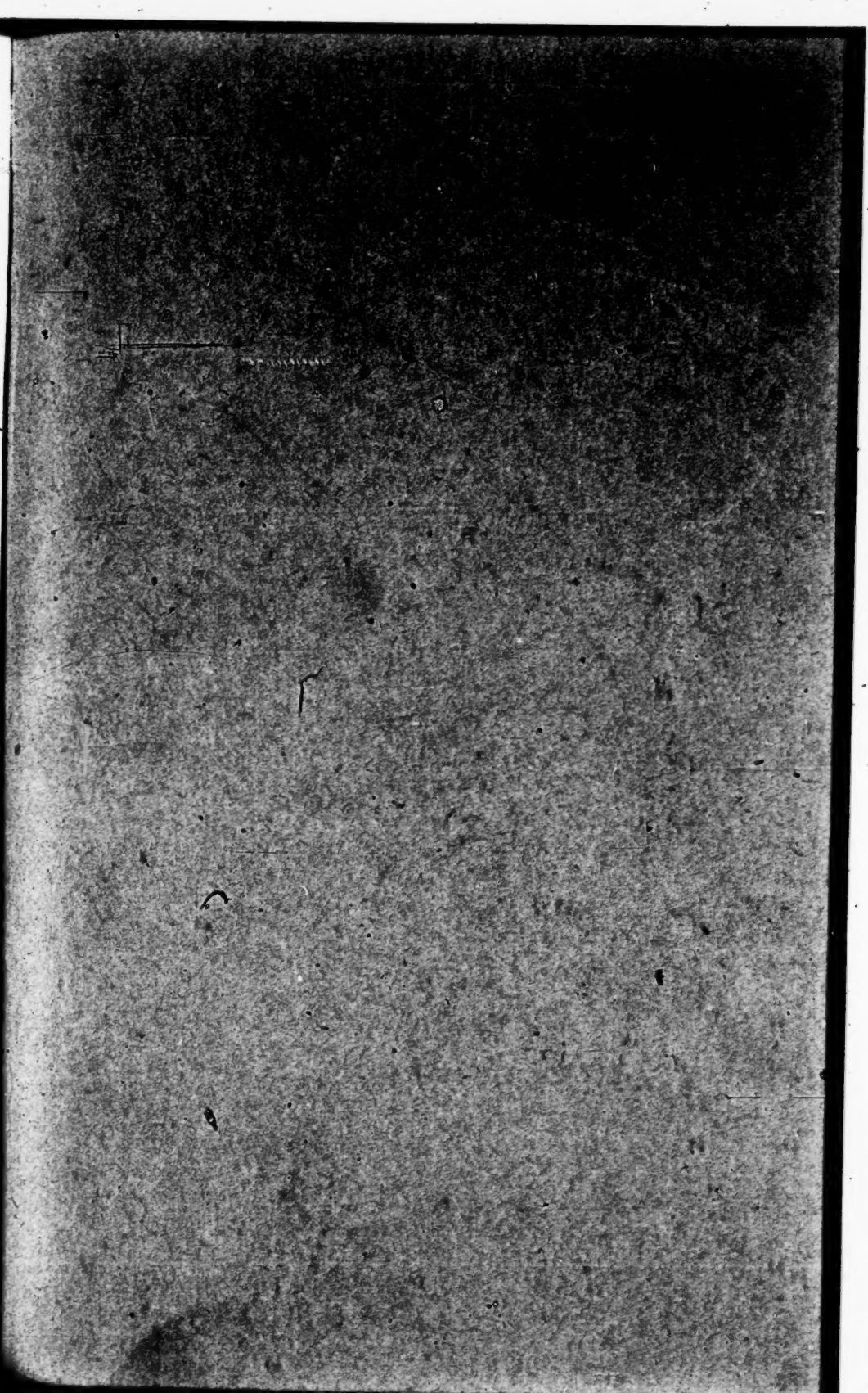
Under item 175, Railway Equipment, the Erie Railroad, [fol. 809] although proposing no change in I. & S. Docket No. 2900, now proposes a proportional increase in these rates provided rates in the Chicago district are increased. In the general investigation they propose as to Railway Equipment to give the matter further consideration, and as to rates on railway equipment in the Chicago district, now stated on a per-car basis, it is proposed to increase those rates relatively with the increase in the general basis. (Tr. 1046.) The traffic officers of the Erie Railroad gave their consent to this general statement. Item 780 on page 29 was concurred in by the Indiana Harbor Belt.

Cross-examination.

By Mr. Atwood:

As to item 85 on page 3, the rates proposed there are not applicable between points in the Chicago district, and has no particular significance, as it appears to be a proportional rate. (Tr. 1047.) Note 37 of the exhibit says: "1½ cents per ton"—that is applicable in connection with shipments having origin and destination within the Chicago district. There was probably no necessity for including that item as a proportional rate to a junction point on traffic going outside of the district, and the 2½ cent present rate could not be used as a proportional in combination with some other proportional rate on cross-district business because the item says: "Not applicable on shipments having origin and destination within the Chicago district." (Tr. 1048.) Referring to rates in the column headed "present" there is no note in connection with that and can be used on cross town business and we propose to change that though not indicated in the column headed "Proposed." (Tr. 1048-1049.)

Chairman Campbell: You gentlemen have had very little time to examine this exhibit and it would perhaps satisfy you better to have that opportunity tonight then if you find [fol. 810] other matters that should be cleared up, Mr. Galligan will be here in the morning. If you have further questions in the morning, you may ask him then.



Supreme Court of the United States

OCTOBER TERM, 1912

No. 787

ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION (OF INDIANA), BOARD OF TRADE OF THE CITY OF CHICAGO, AND ACME STEEL COMPANY, APPELLANTS,

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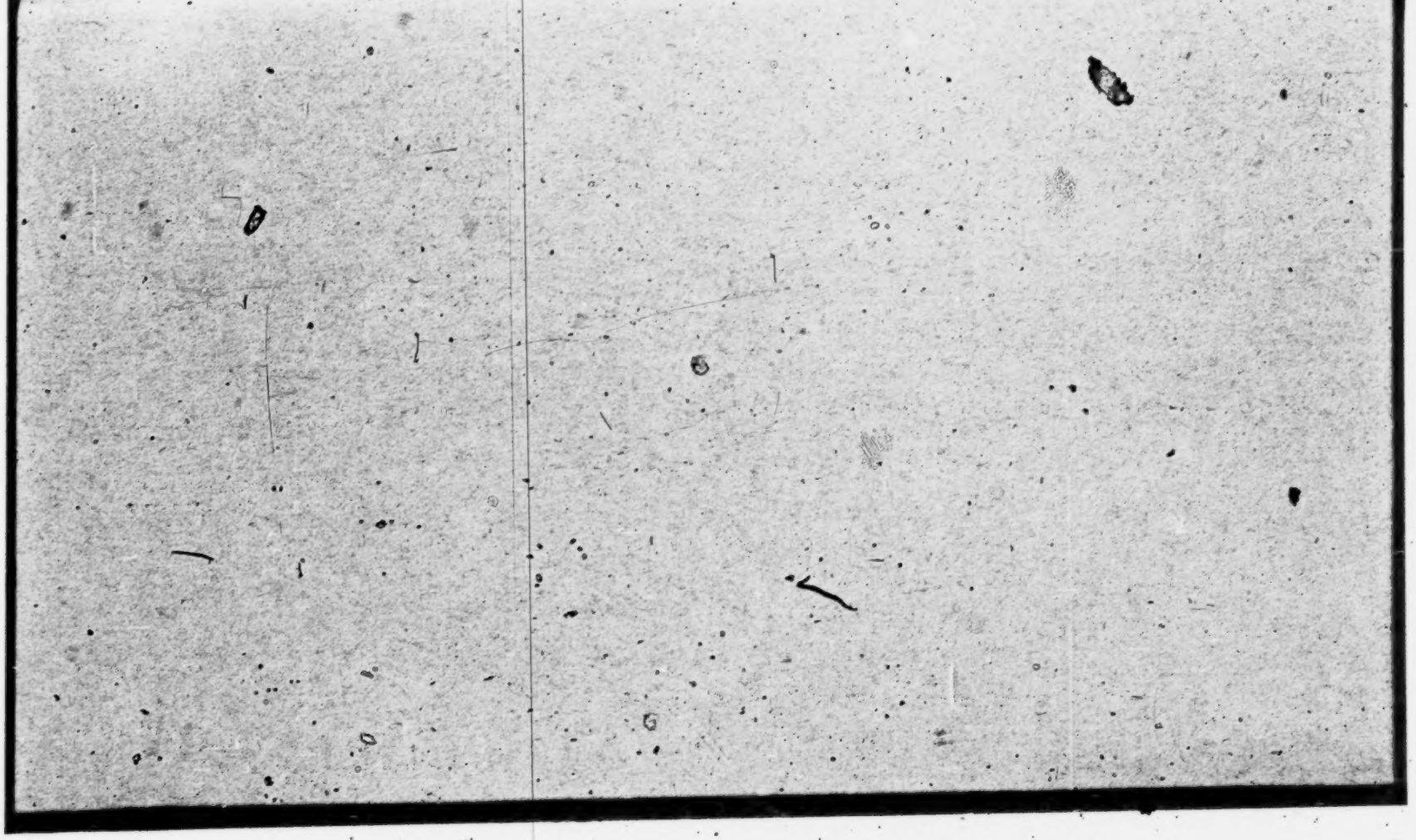
THE UNITED STATES OF AMERICA, THE ALTON RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED FEBRUARY 14, 1913.



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William McMaster	1264	1086
R. A. Feldes	1266	1088
George H. Shafer	1269	1090
K. E. Tholin	1277	1096
C. R. Livinghouse	1304	1118
W. J. Womer	1315	1126
J. L. Roberts	1336	1143
J. E. Pierce	1342	1148
Roy W. Fletcher	1347	1152
T. E. Bond	1358	1161
R. L. Williams	1372	1171
R. A. Barlow (recalled)	1375	1174
J. E. Pierce (recalled)	1379	1178
G. F. Vivian (recalled)	1381	1179
E. F. Saur	1397	1192
G. F. Vivian (recalled)	1419	1209
F. S. Holland	1422	1212
W. J. Hammond	1432	1220
G. H. Staat	1446	1231
Roy W. Fletcher	1457	1240
Robert I. Pierce	1485	1263
S. L. Felton	1493	1269
H. H. Bascom	1497	1273
H. G. Legan	1503	1276
Thomas E. Reilly	1504	1278
H. G. Brown	1508	1281
E. L. Maynard	1511	1284
O. P. Chamberlain	1521	1291
E. L. Maynard (recalled)	1529	1298
H. G. Brown (recalled)	1530	1299
E. S. Gubernator	1531	1390
Certificate as to abstract	1536	1304
Findings of fact and conclusions of law	1540	1307
Order denying injunction and dismissing bill of complaint	1554	1316
Notice of motion for stay	1556	1317
Motion for stay of order of I. C. C.	1557	1318
Exhibits offered at Ledring on motion for stay of order of I. C. C.	1560	1320
No. 1—Petition for modification of Commission's 13th Section order of July 3, 1933	1560	1320
No. 2—Petition of Chicago Junction Ry. for permission to put in force certain rates	1569	1324
No. 3—Rate table	1576	1330
Order denying motion for stay of order of I. C. C.	1578	1331
Petition for appeal	1581	1332
Order granting appeal	1583	1333

	Original	Print
Assignments of error	1585	1333
Bond on appeal (omitted in printing)	1588	
Order permitting withdrawal of transcript of testimony, etc.	1591	1335
Order modifying order denying motion for stay of order of I. C. C.	1593	1336
Orders enlarging time	1597	1338
Waiver of notice under rule 75 and consent to approval of narrative statement	1606	1341
Order approving narrative abstract	1608	1341
Stipulation as to exhibits	1610	1342
List of exhibits	1612	1343
Order as to exhibits	1629	1357
Praecipe for transcript of record	1630	1358
Citation (omitted in printing)	1633	
Supplemental praecipe for transcript of record	1636	1360
Clerk's certificate (omitted in printing)	1638	
Statement of points to be relied upon and designation as to printing record	1639	1361

Mr. Walter: Your Honor, in order to avoid bringing two witnesses here who desire to have their situations spread on the record, counsel for respondents has very courteously permitted me to offer as Exhibit 65, a statement on behalf of the Gary Screw & Bolt Co., and, Exhibit 66, a statement on behalf of the Union Drawn Steel Co., setting forth what they would testify to if they were here in person.

Chairman Campbell: All right, if there is no objection, that may be done.

Said documents were received in evidence, marked "Exhibits 65 and 66."

The hearing was adjourned until May 22nd at 9:30 A. M. (Tr. 1049-1050.)

Hearing reconvened at Chicago May 22, 1928 at 9:30 o'clock A. M., pursuant to adjournment.

C. W. GALLIGAN resumed the stand and testified as follows:

Cross-examination (continued).

By Mr. Walter:

The only increases proposed in rates shown on Exhibit 64 are where an increase or a change is stated under column headed "proposed," in I. & S. Docket 2900. There is no connection between the rates shown in Exhibit 64 and my general statement as to what carriers proposed (Tr. 1052-1053) and we have shown in the Exhibit whether or not that rate was changed or proposed to be changed under the [fol. 811] original proposal in I. & S. 2900. If any change is proposed under that docket, it is shown here. Now we start with an entirely new proposition, read into the record yesterday that it is proposed to advance all rates within the switching district to a minimum of 3¢ per single line, 3½¢ for 2 lines and 4¢ for 3 or more lines, 60,000 pound- minimum. The two proposals or two propositions are entirely separate and distinct. (Tr. 1053.) Exhibit 64 is not a proposal at all, but a statement of the exceptions asked for by the Chairman but under our proposal yesterday, contained

in the memorandum and from which I just read all of these rates will be increased if the Commission approves our proposition except where individual carriers come in at this hearing or some later one and say they do not want to make those increases on particular commodities or for particular movements and in addition, there may be some further items applying to connecting lines which are proportional rates only which if used on road haul traffic come under the reciprocal arrangement and not under local switching in the district and those rates will not be changed. If in Exhibit 64 there is an existing rate not applying wholly to a movement within the district it is not intended to bring that rate within the proposal. (Tr. 1054.) It is not intended to increase any proportional rates applicable to road haul traffic or any reciprocal rates.

Chairman Campbell: I can clear that up very quickly, those are not in issue. (Tr. 1057.)

Mr. J. S. Brown: Well, Mr. Commissioner, the reason I ask the question is that only 2 or 3 days ago they were not going to increase these exceptions and now they are going to change their minds and they might change their minds on the reciprocal charges also.

[fol. 812] Chairman Campbell: Well, I have not changed my mind. That seems to be all, Mr. Galligan. (Tr. 1058.)

The Witness (continuing): We will file a statement showing the percentages of traffic in the district that are interstate and intrastate respectively. (Tr. 1058-1059.)

Mr. Walter: While they are calling the next witness, I would like to have marked as an exhibit the matter which Mr. Forrest referred to, the report on the 19 cars of which we did not have copies at the time. We offer it in evidence as Exhibit 67; which was received and marked, "Exhibit 67, Witness Forrest."

F. C. Furry was sworn and testified as follows:

I am assistant general freight agent of the Illinois Central Railroad system, having been with it for over 25 years, the last 13 of which have been assistant general freight agent. It operates the Chicago & Illinois Western Railroad and my testimony will relate to both lines. As to the 21½c rate on Tar from the Barrett plant at South Chi-

cago to their plant on the Chicago & Illinois Western mentioned yesterday by Mr. Roberts and who said one of the carriers was willing to continue that rate, the Chicago & Illinois Western is the delivering carrier. If other roads desire to continue the rate we will be glad to join them, our view being that the rate should be continued. (Tr. 1060.) The Chicago & Illinois Western is a small switching carrier and 5 or 6 cars per day might not noticeably affect its cost operation, but would affect materially its receipts, and it desires to continue the rate rather than run the risk of losing the business and have it moved by water.

I have two exhibits to offer, the first, No. 68, consisting of a single sheet and the second one No. 69, consisting of [fol. 813] three sheets, which were received in evidence, marked respectively "Exhibits No. 68 and No. 69, Witness Furry." Exhibit 68 shows 5 rates which the Chicago and Illinois Western desires to continue and Exhibit 69 shows similar rates which the Illinois Central desires to continue. There are situations on the Chicago & Illinois Western and Illinois Central for which there should be exceptions and which are shown in Exhibit 68 and 69 and generally apply on black dirt, cinders and refuse used for filling. (Tr. 1061.) Stone, black dirt and strippings covered by the Exhibit pertaining to the Illinois Central have been used very largely for lake front development and our experience is that these commodities will not move on rates higher than we have published, hence we propose no change in them and we may from time to time have to make exceptions on commodities of this nature and will meet that situation when it arises. The first item in Exhibit 68 covers industries on the Manufacturers Junction Railway and the second covers a movement entirely on the Chicago & Illinois Western. The first shows $19.00 per car and the second $7.50 per car. The length of haul would vary anywhere from one mile up to 15 or 16 and the $7.50 is for a one line movement and the $19.00 for a joint line movement. (Tr. 1062.) There is a difference in distance, the one line haul being from Crawford to McCook and the rate really applies to any movements on the Chicago & Illinois Western which are all intrastate. The movement of Tar at the 2½¢ rate from South Chicago is purely a state movement.

Cross-examination.

By Mr. Shank:

Regarding exceptions on black dirt, cinders, etc., I do not think the conditions would be the same if the Illinois Central was not a lake front railroad; (Tr. 1063) and I cannot say whether it would be profitable to other lines but [fol. 814] if it was not profitable to us, we would not want to continue the rates and we do not think those commodities would move at higher rates.

F. A. Meyers was sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am a conductor on the Indiana Harbor Belt Railroad and, with the exception of three years, have worked for it since 1905 as yard clerk, assistant yard master, conductor and switchman. Have been in attendance at this hearing since it started. I assigned the elements of service against the cars that appear in the cost study, working with the cost study committee all the time it was in existence, (Tr. 1065) and attended all of its meetings. I assigned the elements of service against the cars on the Indiana Harbor Belt Railroad. Applying the cost study figures to the movement on the road in 1926, upon receipt of the detention reports Form 6-A from the car accountant, I assigned the elements of service and the index numbers against the cars moving in the cost study. (Tr. 1066.) Taking Mr. Forrest's Exhibit 23, on page 21, shows our index No. 222, a movement from By Products Coke Corporation, Federal Furnace Co., plant to National Malleable & Steel Castings Co., at Bellwood or Melrose Park, of 5 cars, as to which we have the reports of the original conductors showing cars moved as we claim they did. Mr. Forrest cites Chicago & Alton car No. 42312 which he had a man ride a year after the study was made or after the traffic that we used was handled. That car moved, as Mr. Forrest claims, with the exception that the car received preferred handling on the Indiana Harbor Belt. Our yard-master's

turnover from Blue Island, dated August 9, 1927, shows car number and the movement. With this Chicago & Alton car was a Pennsylvania car, No. 282,063 which did not re-
[fol. 815] ceive preferred treatment; and consequently, it went the normal route of the business, (Tr. 1067) to Norpaul and back from there to Melrose Park with the switch engine. The preferred handling mentioned was in a train of what we call shorts for different connections and the conductor stopped at Melrose Park and set it off. Instead of giving the Chicago & Alton car the piecemeal move, we gave it a straight transfer. By through movement, I mean we show as our element of cost a direct movement from Blue Island to Norpaul yard when in fact, the car made what we call a piecemeal movement from Blue Island to La Grange, La Grange to Broadwood, Broadwood to Bellwood and Bellwood to Melrose Park. After assigning the index numbers, we checked those assignments against the record, (Tr. 1068.) taking about 200 or 250 of complicated route numbers which were sent to our car accountant to give us the movement of the cars and they were about all correct.

The only reason for giving the Chicago and Alton Car the preferred treatment is that it appears on our yardmaster's turnover as being a rush car for the National & Malleable Steel Casting Co. (Tr. 1069.) I presume that the man riding the car or someone had said it was a rush car so we held it out on a special track and it was not switched with the local cars. If handled with the latter, it would have gone to track 15, Blue Island, but in this case it was held on the head end of a heavy repair track 22. If someone had not requested preferred movement on this particular Chicago & Alton it would have moved along with Pennsylvania car 282063. (Tr. 1070.)

A car given preferred movement requires more handling. It must be switched out of the cut and on the track not assigned to it. In order to set the Alton car at the industry, the road crew stopped on the hill with the train, cut it off [fol. 816] and let it roll down toward the National Malleable & Steel Casting Co., with probably a man on it to stop it a short ways from the main line switch, the train remaining on the main line track and possibly delaying trains following it. (Tr. 1071.) The second car mentioned in Mr. Forrest's Exhibit 23 was Union Pacific No. 99745.

This was not received at Burnham as set up in our index No. 1910. We received most of our interchange from the Chicago Short Line at Burnham. Our index No. 1910 shows this car handled through Burnham at a cost of 86¢ classified at Burnham and transferred to Calumet City. If it had been shown on our index as received at Irondale, and handled through that point, the cost would have been increased as the classification there would amount to 42¢ and the transfer from there to Calumet City would amount to 46¢ with trackage over Calumet & Western at 15¢, bringing the total to $1.04 instead of 86¢. (Tr. 1072.) These were the only cars that the Indiana Harbor Belt was interested in.

Have been running an Indiana Harbor Belt train, outer belt, continuously for the last nine years, and have worked on different industry engines, and knowing the normal operation of the road I assigned the service element against these cars as I knew them to be. Have been over every foot of track of the Indiana Harbor Belt many times at all hours of the day and night. (Tr. 1073.)

Cross-examination.

By Mr. Walter:

It is not customary, in a movement to the National Malleable & Steel Company, to set a car off at Melrose Park. It is not the normal route of the business. No charge was made for the special handling given this Chicago & Alton car. A charge is made if we make a special run with a car. The Chicago & Alton car was handled in a train of shorts which stopped at La Grange, delivering to the Chicago, [fol. 817] Burlington & Quincy; at Broadview, delivering to the Illinois Central; at Bellwood, delivering to the Chicago Great Western, and then went on to the Soo line. (Tr. 1074.) This was not a special run with the car. My information as to special handling being requested is based on the yardmaster's turnover or report, which showed the car marked "Rush," which shows on the sheet covering this Chicago & Alton car. The cross-entries shown are for the particular train. (Tr. 1075.) The notations in the right hand column are as to condition of train, rush cars, some special handling for some car in the train, or things of that sort, which one yardmaster desires to leave for another.

The O. K. on it was made by Carroll, day yardmaster at Blue Island, and means the car has been lined up and taken care of. The 23 is the heavy repair track at Blue Island. Nothing was the matter with this car that I know of.

This car could not have been put on the repair track and gotten off between 3:15 and 8:55 in the morning, as we worked no repairmen at Blue Island at those hours. A car was placed on this track simply as a convenient place to hold it where the switch engine could get it and put it in the train that was to move it. Yard crews make no repairs to cars in base yards. We have car inspectors and repairmen for that. If a coupler was out of order the car would be put on the repair track and repairmen would fix it. It would be held over and in the following 12 or 24 hours the repairs would be made. (Tr. 1077.) This car arrived at Melrose Park at 1:45 P. M. Behind this particular car they left 15 Soo line cars on the main line while this car was cut on to the track designated for cars for the National Malleable & Steel Castings Company. I cannot tell the time the car arrived at Bellwood station or [fol. 818] when we delivered it to the Great Western. I do not have the wheel report in front of me here and cannot tell when it left Bellwood. (Tr. 1078.) There were 15 other cars with it, but were not a part of this special movement. This car for the National Malleable & Steel Castings Company was put into this train, which was not a special one, being a regular one for making deliveries.

Q. Well, then, when you refer to special treatment you do not mean expedited treatment, do you?

A. The car was held at Blue Island. It did not take the regular course, the normal course of business through Blue Island yard. In using the word "preferred" as to treatment I meant slightly different from that which ordinarily is given, and was handled this way because somebody asked for the preferred movement to get the car out. (Tr. 1079.) In finding the word "Rush" on the sheet I did not assume that somebody thought there should be a rush movement on it, because the car would not appear there unless somebody asked that it be rushed. It might not have been a railroad man, because we would have no object in rushing a car that should take the ordinary normal movement. (Tr. 1080.)

This car had a speedier movement. Otherwise it would have moved with the Pennsylvania car and would have

gotten out to Blue Island about 5:15 that afternoon, while the Chicago & Alton car left there at 8:50 A. M., I believe. Ex. 67 shows it left Blue Island at 10:50 A. M. with Indiana Harbor Belt engine 410 and 58 cars, and got to LaGrange at 11:50 A. M. But I cannot verify that, not having the wheel reports in front of me. The original yardmaster's report for August 9th shows the car in the west yard at Blue Island. (Tr. 1081.) In addition to finding the notation on the sheet, I talked with the man who made the entry, Mr. Harry Ungelder of 286 Burr Oak Avenue, Blue [fol. 819] Island, and he said somebody had asked for preferred movement, but did not say who. I could find from him who made that request and the circumstances about it. I will take Ex. No. 67 that has been filed and check it against the actual handling and have it at a later hearing.

The committee assigned the particular number to designate a particular element of service (Tr. 1082) and ascribed the cost to that, covering the movement of August last year during the test period. I took each element of service and applied that to the traffic moving in September, 1926. I was working on the road at that time and from general knowledge knew how traffic was handled, but I did not take each particular car moving in September, 1926, and trace it as we have this C. & A. car. (Tr. 1083.)

Taking By-Products Coke Corporation to National Malleable & Steel Castings Company at Bellwood, index 29 on the Indiana Harbor Belt, I found the number of cars moving between those points in September, 1926, and from my general knowledge of the operations I assumed certain services were performed at the industry point of origin, and particular movements thereon to destination, and entered the cost figure representing each element of service and added them to get the total movement over the line as I assumed it normally would be made. (Tr. 1084.) If 100 cars moved from the By-Products Coke Corporation over the long haul to the National Malleable & Steel Company and the cut was run through, it would not be a normal movement, and I would deal with it as a single car, because it would not be a normal movement; and by normal movement I mean one devoted to the movement of one or more cars without regard to whether there was a more economical movement actually performed. (Tr. 1085.)

[fol. 820] Chairman Campbell: Mr. Walter, my understanding is that it was agreed between shippers and carriers that a certain test period should be used and that then it should be used for purposes of making calculations as to the other movements. It seems to me obvious that the study must be made upon the general custom and general method of handling cars through that test period, and that we cannot take each one and trace it. (Tr. 1085.) If he handled it in a general way some, perhaps, may have been expedited, and others may have been delayed, but if he sort of averaged it generally I am wondering if we are not splitting hairs a little too much.

Mr. Walter: If they had made a test and applied it against the movements themselves over a period of a month, there would not be any question. All I am trying to develop from Mr. Myers is the manner in which they applied the cost study figures to the traffic figures of 1926. It has been shown that he made the application to the particular cars when those cars did not get the handling that he assumed they did have. (Tr. 1086.)

Mr. Davis: Mr. Myers, in the handling of the cars as described by you, was that the only way humanly possible that it could have been done on the Indiana Harbor Belt? That is, the only way the car would have moved if the Indiana Harbor Belt handled it betwen the two points Mr. Walter refers to?

The Witness (continuing): We have but one route and all cars for that particular industry would move into it: Norpaul, if handled in the regular normal way that business for that district moves.

If we wanted to stop our heavy trains on the hill and tie up the Aurora, Elgin & Chicago and the Great Western we could stop there for every car and not move it through Norpaul. (Tr. 1087.) And if we set the car at Bellwood in-
[fol. 821] stead of where it should have gone, into Norpaul, and let the switch engine haul it back, there are certainly two ways of handling it.

Chairman Campbell: The situation seems to me to be this: The cost study has been presented generally, showing how it was arrived at, which your statistician has criticised. From the cost study presented by the carriers they can make a certain line of argument, and you, from your

criticisms, can make another line of argument, and between those we must arrive at something in regard to the cost study. The differences seem to me are largely matters of argument rather than of technical introduction of testimony, because if we take each of these cars and follow it it would be physically impossible for the Commission to sit and listen to it.

Mr. Walter: Well, your Honor, I am not going to follow along that line at all. I merely wanted to use this as an illustration to develop how he applied his elements. As to the empty car, Mr. Myers, did you at all determine where any empty cars came from, charged for in this cost study from an industry to a consignee?

The Witness (continuing): The assignments of these cars were made by our superintendent of car service from his records, showing point of assignment and everything; but I knew nothing about the application of the cost on the empty cars. I took his assignments and applied the cost to them. (Tr. 1089.)

Examination by Mr. Slater:

On an order of a car for placement for loading we get it at the nearest available base yard. The first move would be from some place to the industry where the car was moved empty for loading. (Tr. 1090.) The accounting people determine the element to be charged for that service. I as- [fol. 822] signed the element of service in the cost. (Tr. 1091.) As illustrating the manner of my assignment of elements of service, take a movement shown on page 7 of Oliver's Ex. 13 from A. C. O'Laughlin Company (Tr. 1092) to Central Lime & Cement Company. Our superintendent of car service from his records showed the car was assigned to this particular loading at Norpaul yard, showing the movement empty. I then applied the classification at Norpaul yard, switching the car out and getting it to the train that would take it to the plant of the A. C. O'Laughlin Company; then the transfer from Norpaul to the O'Laughlin Company at Bellwood, the industry switch at that plant, the transfer from the plant back to Norpaul yard for classification as to direction, because we have no classification tracks at Bellwood; that is whether it is a local car or a through car or a car from the stockyards line. (Tr. 1093.)

The car is then transferred from Norpaul to Chappell Junction, where we set off all cars for the stockyards line. The car is classified there into a stockyards train and moved from there to Elsdon; there classified, because all cars moving out of Chappell Junction are not for the Central Lime & Cement Company; then follows the industrial switch at the Central Lime & Cement. After the car is made empty—all cars coming out of the Central Lime & Cement Company are not for the same destination—it is necessary to classify at Elsdon, with transfer from there to Blue Island; classification over the Blue Island hump, thence transfer to Gibson and delivered to the New York Central, the home for the car. Classification is necessary at Blue Island because at Elsdon classification is only as to direction, and at Blue Island as to districts, with reclassification at Gibson again to put them over the hill there. (Tr. 1094.) The [fol. 823] car moves to Gibson because it is a New York Central car, but all out of Blue Island are not for *for* that railroad (Tr. 1095), and there may be other places the train will go besides Gibson. Sometimes the Indiana Harbor Belt holds New York Central cars for prospective loading. All empty cars arriving at the Gibson yard are in the possession of the New York Central, and all New York Central cars arriving there are in its possession. (Tr. 1096.) The Gibson yard is operated by the Indiana Harbor Belt. A car of ours taken to Gibson yard and one belonging to the New York Central differs in treatment in that the Indiana Harbor Belt would not be classified for the New York Central unless it was a load going out on that road; and the reason for the classification of its car and not one of the Indiana Harbor Belt is, when they are classified over the hill at Gibson they are put into a New York Central train. (Tr. 1097.)

Element 129 was developed in the cost study period on a movement of 15 cars according to our 107 here. (Tr. 1097.) There is a considerable movement of stone from the O'Laughlin Company to the Elsdon district. I can't say how much or where it goes, but there is a considerable movement from the O'Laughlin quarries. The 15 cars moving in the study period did not influence me in assigning costs to a large volume of cars, and that cost based on the few cars, might be assigned to the large number of cars in the September, 1926, period. (Tr. 1098.)

There were no direct transfers from Elsdon to Gibson in which this empty might have moved, because we do not run transfer trains that way; all transfer trains eastbound stop at Blue Island. (Tr. 1098.) There might have been a heavy movement in the cost study period and a very few in the September movement. The transfer movements [fol. 824] as well as the classifications assigned are not based upon an actual check of the records in each case. The industry orders empties from the railroad and it gets the car from the nearest base yard, such as the Gibson, Blue Island, Norpaul or Michigan Avenue yards. (Tr. 1099.) We have a base yard at Michigan Avenue, Calumet City, and others. The agent at these other yards does not hold cars for loading, though we try to anticipate the needs of the industry; and where an industry might load 50 cars today, it might not load more than 5 or 6 the following day.

In following this movement of the New York Central car on the tracks of the Indiana Harbor Belt, empty at Norpaul, it was our duty to return it to the New York Central. (Tr. 1100.) But beginning at Norpaul we assigned all of the costs of that car from the time it was available at that yard to the point at which it was loaded, and from the point at which loaded to the destination point. We then assign the movement of that empty car from that point back to the New York Central after the car is made empty. (Tr. 1101.) If after unloading by the Central Lime & Cement Company, and we had use for it by some other industry, we probably would have used that car in that particular district; but if it did move that way that element of cost, of returning it back to the New York Central, would not appear in the cost study that we have presented. After being made empty by the Central Lime & Cement Company, if it was loaded at Elsdon there would be no empty haul to the New York Central. (Tr. 1102.) We did not follow each individual car, but I can tell whether or not this car was reloaded at the Central Lime & Cement Company or at some other industry in the district, because the detention report 6-A shows where the car was loaded and how it was assigned. The car service department entered on the deten- [fol. 825] tion report the assignment and the release of the car, showing time and place and whether reloaded or empty. (Tr. 1103.)

As to assignment of cost elements in the cost study of switching from the O'Loughlin plant to the Central Lime

& Cement Co., and bearing in mind that the empty was on our tracks at Norpaul at the time we got the order for the empty car, if we had not assigned this car at that point for the O'Loughlin loading, we would have had to assign it from some other point on the railroad, (Tr. 1104) and if we had assigned it from some other point, it might not have been necessary to return it to the New York Central at Gibson Yard, but we might probably have had to take it back to the Pennsylvania at Indiana Harbor, if we assigned the Pennsylvania car, which is a longer haul; and the haul back to the Pennsylvania would have been because the car had been delivered to us under load and made empty on our line and thus required to be returned to the Pennsylvania Railroad. (Tr. 1104.) We have assigned a cost to switching after the car is made empty and the service has been performed of returning it to the home road a service we had to perform because the car reached our line was used and it was our duty to return it to the home road. (Tr. 1105.)

I assigned the element cost of weighing not from the records showing weighing of cars, but from my general knowledge of industrial assignments on the Indiana Harbor Belt. It was not based on actual records, (Tr. 1106.) and that applies whether I assign as many as 3 or 4 weighings to one movement. The same is true regarding the element of cost for cleaning cars. Regarding unusual cost items referred to by Mr. Sauer, as not being used because either too high or too low, we have one of transfer from Gibson from the Youngstown Sheet & Tube Co., plant around $29.00. We did not make use of that. There are no other cost elements not used that I can think of off hand. [fol. 826] (Tr. 1107.) In determining whether an item was unusually high or unusually low, we had nothing in the industrial switching movement or the transfer movement that we thought unusual because the volume of business handled in some cases brought the business up and in other periods probably the reverse could have happened. We had no fixed amount of money used as a measuring stick for industrial switching cost. (Tr. 1108.) On movements from Gibson to Norpaul, for local industries on the Indiana Harbor Belt, we handled them in a local train which builds up at Gibson with Wabash, Belt, Santa Fe, Illinois Central, Great Western and North Western cars This is a piece-meal movement stopping at each one of those stations

to set out. We apply the cost of transfer from Gibson to Chicago Ridge, from there to Argo, from Argo to the Illinois Central or whatever the next point was. Then from Argo to La Grange and from there to the Illinois Central, etc. We selected these particular movements from the train sheets and the wheel reports and assigned the cost in the normal way to the cars moved. If our records showed from our cost study that a larger volume moved from Gibson to Argo than from Gibson to Chicago Ridge, it would have no effect upon our decision to use the 2 moves from Gibson to Chicago Ridge and then from there to Argo. We paid no attention to the volume of traffic moving on the various elements. (Tr. 1110.) We apply the element principles just as the normal move of the car would be made over the Indiana Harbor Belt. This one particular train referred to moving out of Gibson leaves about 10:45 or 11:00 o'clock every day and another train of the same character out of Blue Island. Cars now moving in the first train probably move later in the evening or the night. (Tr. 1110.) In a switch movement from the Chicago, Milwaukee & St. Paul Railroad to an industry in the Central [fol. 827] Manufacturing district on our railroad we would receive the car from that road at our Norpaul yard and classify it there, moving it thence to Chappell for another classification; thence from Chappell to Elsdon for classification and it would probably be delivered to the Central Manufacturing district for whomever consigned, by the Elsdon switch engine. If the car was made empty and not reloaded and returned to the Chicago, Milwaukee & St. Paul Railroad, we would assign that cost to the back haul, but if it happened to be a New York Central car, we would deliver it to that line and assign the cost of delivery to the New York Central. It would go back from the Central Manufacturing District through Chappell and Norpaul if the car was going to the St. Paul Railroad. (Tr. 1111.) But if it was going home to the New York Central, it would go East to Blue Island. We have assigned all that cost to it and if a New York Central car, we would take it home and the cost of taking the car home would be assigned against the switch. If the car was used on our road at Elsdon and loaded to a point at Indiana Harbor and then unloaded, we would assign the empties cost from Indiana Harbor to Gibson and delivery to the New York Central at

Gibson if it went that way, and that would not include the cost of empty haul both times. It would not be included in the movement from the Central Manufacturing District as well as the movement to it. (Tr. 1112.)

When our car accountant showed the car went to a connection we have charged for returning the empty from the point where made empty, and if a foreign line car the cost of returning it home is shown in our report except those that remain empty at some particular point and are used again before the car was returned home. We actually assigned the cost as shown by our car accountants either that the car went home, or to some other connection other than home, loaded or empty. (Tr. 1113.)

[fol. 828] Taking the first charge element No. 25 classification at Norpaul shown on page 7 of Exhibit 13, it was necessary to return the car home whether used in the service or not. (Tr. 1114.)

Element 11 is classification at Elsdon. We would not have had to perform that service if the car had been used. The next item of classification at Blue Island would have been performed if the car had returned home loaded or empty and the next transfer from Blue Island to Gibson is cost that we would have had to assume and likewise the next one classification at South Hump Yard at Gibson. (Tr. 1115.)

Recross-examination.

By Mr. Walter.

The $2.11 charge for transfer from Norpaul to Chappell does not appear to me as high due to the fact that there was a low volume of business moving. (Tr. 1116.) If we were making a cost study in September 1927, the cost would not have been $2.11 and it does not look like a normal cost because the low volume of business is what brought it about. (Tr. 1117.)

Chairman Campbell: Just a moment, Mr. Walter, it seems to me the trouble with the situation as I understand it is that it was agreed that those certain days were taken for the cost and then that cost should be applied to the other movements. Now, I presume it is true that if some other 7 days had been selected instead of these 7 days,

there might have been elements that were not in these 7 days.

Mr. Walter: Yes, Mr. Commissioner, but I am trying to point out this. It is not fair to take that $2.11 and apply it against all of the cars in September.

Chairman Campbell: Well, is that not a matter of argument?

Mr. Walter: We have got to get some facts in the record and the witness admits it is abnormal. (Tr. 1118.) [fol. 829] A normal movement from A. C. O'Loughlin plant to the Central Lime and Cement Co., would not have been from Norpaul to Argo with classification there and thence from Argo to Elsdon because the cars would not go into Argo. Even though on the other 6 days we had 742 cars moving from Norpaul to Argo and 3,514 cars classified there and 812 moved from Argo to Elsdon and we had but 15 moving via the route under which the costs were assessed, I still say the route of movement would be the normal route. (Tr. 1119.) We gave you the actual movement and even though it appears that we had more than 30 times as many cars moving from Norpaul to Argo as from Chappell and had 7 times as many classified at Argo than were classified at Chappell I would still say that we did not pick the wrong route to compute the costs.

Redirect examination.

By Mr. Davis:

This $2.11 charge is applied to the actual movement and was normal for the test period. (Tr. 1120.)

Recross-examination.

By Mr. Tholin:

As to the instructions to transfer men, they were told to show transfer from Gibson until the time they reached the first industry, that is, from the time they reached the point of the switch leading into the industry it would be industry time until they got out of there. If there was a distance of half a mile, to another industry, there would probably be another transfer but if two industries were right adjacent, a transfer to the second one would not be shown. (Tr. 1121.) An engine moving into Argo and

thence to Norpaul and if the make up of the train was changed at Argo, there would be time out but our transfers do not move that way. If the engine was setting out cars at Argo to the Chicago & Alton or the Belt, that time would [fol. 830] be shown from the time the engine stopped at Argo in making interchange to the Belt, for example until it got back to Elsdon and if our classification details and transfer details show that the conductor used the same time for his arrival and departure at Argo and yet completely changed the makeup of the train at that point, it would indicate there was something wrong there, that he had included in his transfer cost certain times spent in doing other work. (Tr. 1122.)

Direct examination.

By Mr. Connell:

Page 29 of Exhibit 13 shows shipment of car of corn from Armour Grain Co., to American Maize Co., via the Chicago & Northwestern and the Indiana Harbor Belt in a Chicago, Burlington & Quincy Car. That car would be received from the Chicago & Northwestern Railway at Irondale and loaded at the Armour Grain Co.; by the Northwestern switches to that elevator. We would transfer the car to Calumet City. The Northwestern may have brought the car to the Armour Grain Co., or the Chicago Belt but I could not say who brought it in there, (Tr. 1123.) or whether it went to that industry under load or not. The first movement of the car when we got it was from the Chicago & Northwestern elevator at Irondale under load. We moved it to the American Maize Co., where it was unloaded and then we charged for the empty haul to the Chicago, Burlington & Quincy at La Grange because the car could not be loaded either by the American Maize Products Co., or in that particular district. La Grange was the nearest point to the home road. (Tr. 1124.)

[fol. 831] Chairman Campbell: At the beginning of this hearing, I made the announcement that at the adjourned hearing testimony would have to be confined to rebuttal testimony only. On account of developments, that ruling must now be abrogated and and the case is open for such

further testimony as may be pertinent, on the entire case, at the next hearing. (Tr. 1125.)

(Tr. 1126):

Recross-examination.

By Mr. Atwood:

The Chicago & Alton car from the By-Products Coke plant to the National & Malleable Steel Casting Co., was set out by the road crew and handled as a local train with local industry cars or with local railroad cars in not sufficient volume to make direct deliveries to railroads, like the Soo Line, Chicago & Great Western and the Illinois Central, though it was a regular train. (Tr. 1126.) This particular train started at Blue Island and its final destination was Norpaul. We have a similar train handling business, moving in the opposite direction. I said the service from Norpaul to the O'Loughlin quarry was a switching service. The La Grange quarries are not served by the same switching crew with empties. Those quarries are served by the Argo switch engines. (Tr. 1127.) The empties arrive from different points in train load lots, some going out of Gibson yard for the quarries in the McCook district and some in train lots come out of Blue Island yards, being gondolas, for the quarries in the McCook district. Loads picked up at La Grange are classified in the district as to direction by the railroads and are handled by these road crews. We have a train out of Blue Island every night which picks up the stone in the McCook district after the switch engine has classified it and returns it to Blue Island with the traffic that goes there, (Tr. 1128.) and is there classified as to district and from there it is handled by one of the local trains with a road crew. It will be handled by [fol. 832] a train going to Michigan Avenue if the car is routed that way or it will be handled by a train going to Calumet City if the destination is South Chicago. (Tr. 1129.)

They are all-switching service crews on our line, but the switching service referred to is handled by railroad crews or transfer crews, which perform transfer service only, while the switching crew or yard crew performs all yard service. The crew running from Norpaul as far as Blue Island or Gibson we call a road-haul crew or transfer crew. (Tr. 1129.)

Chairman Campbell: My understanding is that during the time elapsing between now and the next hearing, the representatives of shippers, carriers, and the state commissions and Mr. Elmore of the Interstate Commerce Commission are to endeavor, by conference, to iron out such disputed facts in regard to the cost study as they may be able to; that where they find it impossible so to do, then such disputed facts will be clean-cut and representative of the various positions taken by the parties, in as concise and as sharply-drawn a manner as possible. That certain exhibits presented by the carriers, particularly Ex. 11, will be reworked by the carriers in regard to cost study cars.

Mr. Walter: Yes.

Mr. Slater: Yes.

Mr. Davis: Yes. (Tr. 1130.)

Chairman Campbell: And additional exhibits are to be prepared by carriers, showing exceptions to the Lowrey agreement, both those taking higher and lower rates than the Lowrey agreement, in connection with the exhibits showing the 26,000 cars.

Mr. Davis: Yes.

Chairman Campbell: It is desirable to have these exhibits in the hands of various parties at least ten days before September 1st, my understanding being that the carriers have agreed to continue the suspension of rates under [fol. 833] Docket 2900, and that all parties must be ready not later than September 1st to go ahead with the case and dispose of it at the next hearing; which will be some time in September, at Chicago. (Tr. 1131.)

Mr. Slater: The agreement of the carriers is that the state rates or the effective date thereof will be postponed pending this hearing.

Mr. Davis: Yes.

Mr. Slater: Will the same act be taken by the carriers on the Indiana order of suspension?

Mr. Davis: Surely. (Tr. 1132.)

Chairman Campbell: We will take an adjournment of this hearing to such time as will be announced later

Whereupon the hearing was adjourned at 11.40 o'clock A. M., May 22, 1928. (Tr. 1133.)

Pursuant to the adjournment taken, the hearing reconvened at Chicago, Illinois, September 18, 1928, at 11 o'clock A. M. (Tr. 1134.)

R. I. PIERCE recalled, testified as follows:

Direct examination.

By Mr. Cardy:

I am the same Pierce who testified in this proceeding on May 18th.

Since that hearing the additional evidence I am about to submit has been considered and approved by our traffic committee and our board of directors, and I offer my exhibit No. 70. (Said document was received in evidence and marked "Ex. No. 70, Witness Pierce.") The information shown in this exhibit is taken from the Biennial Census of Manufacturers for the year 1925, pages 1455 and 1456, being the last report published by the Bureau of Census. [fol. 834] (Tr. 1143.) It shows individual reports by the Bureau of Census for 43 Illinois cities, and shows the relative importance of Chicago Heights as an industrial community, as compared with the other Illinois cities. The exhibit also shows the number of industrial establishments, average number of wage earners, excluding salaried employes; amount of wages and value of products, excluding the value added by manufacturer. The product value is the selling value at the factory, whether sold or not, and value added by manufacturer is the value of products less cost of material.

Of the 43 Illinois cities mentioned in the exhibit Chicago Heights ranks fourteenth in the state as to number of industrial establishments, 11th in number of industrial wage earners, 8th in amount of industrial payroll and in value of products. (Tr. 1144.) The exhibit shows in 1925, according to the Bureau of Census report, that Chicago Heights had 67 industrial establishments employing 4588 persons, excluding salaried employes; industrial payroll $7,016,918, and value of products $40,659,846. (Tr. 1144.) The industrial survey of the Chicago Heights Chamber of Commerce for 1926 shows 5266 industrial employes in Chicago Heights; industrial payroll $8,995,329, and value of products $53,129,826. The variance between the Census Bureau report of 1925 and the Chicago Heights Chamber of Commerce survey for 1926 arises from a different method of classification being used.

Since the last hearing have made an investigation to determine value of plant and plant equipment of the various industrial concerns in Chicago Heights, 38 companies reporting; total present value of plant and equipment, less depreciation, of these 38 companies, $18,252,348. The growth of Chicago Heights as an industrial community is due to its proximity to Chicago, and to the maintenance of [fol. 835] the Chicago switching district basis of rates on traffic to and from Chicago.

Ex. 71 is a list of manufacturers at Chicago Heights, with list of competitive industries in the Chicago switching district. (Said exhibit received in evidence, marked "Ex. No. 71, Witness Pierce.") (Tr. 1145.) It was compiled to show the commercial competition between Chicago Heights industries and those in the Chicago switching district, and results from a survey made through Chicago Heights industries to determine the extent of that competition. Fifteen Chicago Heights industries report 43 concerns at 34 different points in the Chicago district that manufacture articles competitive with those produced by the 15 concerns at Chicago Heights.

The American Manganese Steel Company at Chicago Heights, on the Chicago Heights Terminal Transfer Railroad, manufactures manganese steel castings. In the Chicago district its competitors are Pettibone-Mulliken Company at Cragin, on the Belt, and Kensington Steel Company at Kensington, Illinois, on the Pullman Railroad. The extent of this competition is illustrated by the various concerns shown in the exhibit. (Tr. 1146.)

All these industries at Chicago Heights ship considerable tonnage to the Chicago switching district, sold in competition with similar industries in the Chicago district, and most of the Chicago Heights industries purchase large amounts of raw materials in the Chicago District. (Tr. 1147.)

Saur's Ex. 7 shows $18.96 total average operating per car cost for two-line hauls in the district, and total average operating cost of .0231 cents per hundred pounds. For three-line hauls, $21.64 average per car operating cost, and .0258 cents average operating cost per hundred pounds.

His Ex. 8 shows average per car operating cost of $18.81 [fol. 836] for two-line hauls between Chicago Heights and the district, and .0259 cents average operating cost per 100

pounds; and $21.60 average per car cost for three-line hauls between Chicago Heights and the district, and total average operating cost of .0309 cents per 100 pounds. (Tr. 1147.)

Transportation service rendered by the carriers in moving traffic between Chicago Heights and the Chicago switching district is the same as that rendered by the carriers moving traffic within the district; and we believe the commercial competition should be an important factor in fixing the boundary line of the Chicago switching district.

In connection with the commercial competition between industries at Chicago Heights and those within the Chicago switching district, I have prepared a map, Ex. No. 72. (Said document received in evidence, marked "Ex. No. 72, Witness Pierce.") (Tr. 1148.) On the exhibit are circled the 34 different points in the district where the 43 industries therein are competitors of the Chicago Heights industries. (Tr. 1148.) Chicago Heights iron and steel producers have competitors at Indiana Harbor, East Chicago, Deering, Irondale, Cragin, Kensington, and other points; and brick producers have competitors at Crawford, Galewood, Schiller Park, Riverdale, Weber, Healy, and Blue Island. These are illustrative of the general competitive situation of practically all Chicago Heights industries, indicating the commercial necessity for the preservation of a uniform basis of switching between points within the district and Chicago Heights. (Tr. 1149.)

My next three exhibits are numbered 73, 74 and 75. (Said exhibits received in evidence, marked respectively "Ex. No. 73, 74 and 75, Witness Pierce.")

Ex. 73 shows industries and concerns on the Baltimore & Ohio Chicago Terminal having individual or private [fol. 857] tracks. Ex. 74 shows industries on Chicago & Eastern Illinois and Chicago & Western Indiana in the Chicago switching district. Ex. 75 shows present and suspended rates between points on Chicago Heights Terminal Transfer Railroad and points in the Chicago switching district, as compared with present and suspended rates between competitive industries within the Chicago switching district. The three exhibits show industries and territory in the district served locally by the Baltimore & Ohio Chicago Terminal and Chicago & Eastern Illinois Railroad. (Tr. 1150.) Heavy lines on my previous exhibit show routes

of Baltimore & Ohio Chicago Terminal and Chicago & Eastern Illinois in the Chicago switching district, the former serving a considerably greater area via its own line than does the latter. Ex. 73 shows over 400 concerns on the Baltimore & Ohio Chicago Terminal and Ex. 74 shows 61 on the Chicago & Eastern Illinois and Chicago & Western Indiana in the Chicago switching district. Industries on Chicago Heights Terminal Transfer Railroad have competitors on practically all lines in the district, and Ex. 75 shows in a majority of instances the suspended rates from and to Chicago Heights Terminal Transfer are ½ cent higher than the basis from and to the Baltimore & Ohio Chicago Terminal, and between the former and connecting lines are ½ cent higher than the other lines shown. (Tr. 1151.)

A higher charge to and from points on the Chicago Heights Terminal Transfer than obtains on other lines depends upon whether the service performed by the Terminal sufficiently increases the cost to warrant a higher rate. The rates to and from the Terminal are the same as rates to and from the Chicago & Eastern Illinois. The acquisition of that terminal by the Chicago & Eastern Illinois has not brought about changed conditions justifying a higher charge being [fol. 838] assessed from and to the Terminal than would apply from and to the Chicago & Eastern Illinois. (Tr. 1152.)

Chicago Heights is 3.7 miles from the southern boundary line of the Chicago switching district. Hobart, Indiana, to Clark Junction, the first station on the Pennsylvania in the district, is 9 miles; Aurora to LaGrange, the first station on the Chicago, Burlington & Quincy in the district, is 23 miles, and from Joliet to Gary 23 miles; 25 miles Joliet to McCook on the Atchison, Topeka & Santa Fe, Gary being approximately 2 miles from McCook; Joliet to Blue Island on the Rock Island, and to Summit on the Chicago & Alton, is 25 miles; I mean Gary, Illinois. (Tr. 1154.)

The boundary line of the switching district should be determined by the area within which the carriers actually render switching service, and the commercial competition between industries within the area where the switching service is performed. Mileage is not an important factor in determining switching boundaries, as length of haul will always vary in switching district. Between Hobart and Chicago the carrier performs a road-haul service with a

local way train operating between Valparaiso and Clark Junction, Indiana (Tr. 1155), and so found by the Commission in Volume 122 I. C. C. 81. The carriers perform road-haul service from Aurora and Joliet to points within the district. The carriers between Chicago Heights and Chicago switching district perform switching service. (Tr. 1156.)

(Ex. 76 offered and received in evidence, marked "Ex. No. 76, Witness Pierce.") It contains 32 pages and shows revenues per car under proposed joint-line switching rates, compared with revenue per car on various commodities from and to Chicago. (Tr. 1158.)

[fol. 839] The Exhibit contains 523 rates, 296 of which produce car revenue of $24.00 and 227 produce less than $24.00 under line haul rates. (Tr. 1158.) These are rates published from and to specific points and are not intermediate rates or rates from or to points taking the same point as a basing point. To avoid 4th section violations under increased switching rates, the carriers are obliged to increase the minimum charge per car on line haul traffic from and to Chicago from $19.00 to $24.00. Pages 1 and 2 are summaries of average miles for the different revenues per car; page 1 showing 64 rates per car revenue is $15.00 and average haul 40.7 miles; 41 rates with $19.50 per car revenue, average haul 84.5 miles. On page 2, are 296 rates producing $24.00 per car revenue with average haul 76.1 miles. (Tr. 1159.) On page 1 are 96 rates with car revenue less than $19.00, the present minimum per car charge of traffic from and to Chicago. The summary on page 3 shows average per car revenue ranging from $16.80 to $23.93 on minimum weights ranging from 10,000 to 60,000 pounds. The exhibit shows the increased charges and the increased revenues that will result if the carriers' proposals are allowed. In compiling this exhibit we selected all rates we could find where car revenue did not exceed $24.00 and in most instances routes are shown by both the short line and the longer distances. The rates and the revenues per car in this exhibit would include absorption of terminal switching charges in the Chicago district as well as such charges at origin or destination stations. Generally, carriers absorb origin and destination switching charges down to a minimum of $12.50 to $19.00 for a road haul movement. (Tr. 1160.) Witness Vivian's Exhibit 11

shows 21.8 miles average haul for 2 lines and 26 miles for 3 lines between points in the Chicago-Chicago Heights [fol. 840] District. Based on present minimum, present rates of 2½¢ and 3¢ per 100 respectively, produce $15.00 and $18.00 per car, while page 1 of this exhibit shows average road haul distances range from 29 to 85 miles with per car revenues ranging from $10.00 to $24.00; the average distance on this exhibit for road haul is 65 miles; average per car revenue $21.44, average minimum weight 25,476 pounds.

My Exhibit No. 77 is a map, which was offered and received in evidence marked "Exhibit No. 77, Witness Pierce". (Tr. 1161.) This map shows the territory where line haul per car revenue based on tariff minimums from and to Chicago does not exceed $24.00 per car. It shows the territory which will be affected by increased switching rates in the Chicago-Chicago Heights district. This territory extends West to the Mississippi River, North to the Milwaukee-Madison line, South including Peoria & Bloomington and East in Indiana including Michigan City. My Exhibit 78 shows revenue per car on various commodities from and to Chicago, which was received in evidence, marked "Exhibit No. 78, Witness Pierce". (Tr. 1162.) It consists of 32 pages, one to four inclusive, summarizing the information in pages 5 to 31 inclusive. It shows 509 rates from and to Chicago on various commodities with per car revenues ranging from $24.63 to $36.00, but does not show any per car revenues less than $24.00. The average miles range from 37 to 245. Average distance of all 116.3 miles. Average per car revenue is $31.15; average minimum weight 28,678 pounds. Under these rates carriers absorb switching charges at origin and destination. (Tr. 1163.) My Exhibit 79 is a map, to accompany this exhibit, which was offered and received in evidence, marked, "Exhibit No. 79, Witness Pierce." (Tr. 1163.) It outlines the territory where per car revenue on various commodities from and to Chicago does not exceed $36.00. [fol. 841] Points circled are some specific points from which per car revenue on various commodities from and to Chicago range from $24.63 to $36.00 as shown in the previous exhibit. It is our position that with the inclusion of Chicago Heights in the Chicago Switching District, that the rates on line haul traffic from and to Chicago Heights

should be placed on the Chicago basis which will result in some increases as well as some reductions. (Tr. 1164.)

Cross-examination.

By Mr. Orcutt:

The outer lines shown on Exhibits 77 and 79 are not proposed as the boundaries of the Chicago Switching District.

Chairman Campbell: Well, now, I think perhaps we ought to understand this thing a little more clearly before we proceed further. We are receiving this testimony but not for the purpose of determining whether the switching district of Chicago should be extended or not. This investigation is confined to the switching district of Chicago. The carriers voluntarily have heretofore given Chicago Heights the same rates as the Chicago Switching District. Now, I think this is probably what will happen: We will determine what the rates should be in the Chicago District but do not believe we will determine in this proceeding as to whether Chicago Heights should have the same rates or not. (Tr. 1165-1166.) That is something that will have to be determined in the future by voluntary action of the carriers. * * * So, I do not want you to get the wrong impression that this testimony is being received with any idea that we are in this proceeding, going to extend the switching limits of the Chicago Switching District.

Mr. Slater: Mr. Commissioner, I would like to ask this, "Mr. Webster, as to some of the rates from Chicago Heights to Chicago where they were on the same basis as to the rates between points in the Chicago District, [fol. 842] does your tariff propose to increase them in the same amount or make the same increases as apply within the district?"

Mr. Webster: We do, yes, sir.

Mr. Slater: We have that before us for determination, Mr. Commissioner. (Tr. 1166.)

Chairman Campbell: Yes; as I say, those matters are before us but insofar as taking the limits of the Chicago Switching District and crowding them on out is concerned, I do not think we have that before us.

Mr. Webster: Mr. Commissioner, have you before you the level of the rates or the measure of the rates Chicago vs. Chicago Heights?

Chairman Campbell: I do not think we have before us the measure of the rates from Chicago Heights to the switching limits.

Mr. Webster: They are under suspension?

Mr. Slater: Yes.

Chairman Campbell: Well, if they are under suspension, we will have that in the suspension case but I do not think our general investigation goes to that extent.

Mr. Webster: Well, is not the suspension case a part of your general investigation?

Chairman Campbell: Yes, that is, not necessarily covering the same scope however. The rates that are suspended, of course, are under investigation (Tr. 1167) but as to those rates which are under suspension the carriers are the proponents and therefore carry the burden to justify.

Mr. Webster: The Commission, of course, understands that our rates covering all traffic between Chicago and Chicago Heights are under suspension in this proceeding?

Chairman Campbell: Well, as I say, I am not entirely [fol. 843] clear as to just what is under suspension; and my statement was for the purpose of making it plain that insofar as the general investigation is concerned, I do not understand that we propose to extend the switching limits as switching limits of Chicago. Of course, if we have rates here proposed that are under suspension, those rates are under investigation.

Mr. Webster: Well, I wanted that to be clearly stated here on the record because every rate that we have between Chicago and Chicago Heights on every kind of traffic is before the Commission in this proce-ding.

Chairman Campbell: Very well.

Examiner Faul: Are those rates published in a switching tariff?

Mr. Webster: Yes, sir, they are published in a switching tariff.

The Witness (continuing): And they are the same as the rates within the district and that is also true of the Baltimore & Ohio Chicago Terminal.

Mr. Webster: It is an individual issue of the Chicago & Eastern Illinois and not in the Lowrey switching tariff.

The rates from Chicago Heights have been carried in the individual issue of carriers but are all under suspension. Joint rates are published in the Galligan Tariff. Local rates between Chicago and Chicago Heights are switching rates published by the Chicago & Eastern Illinois. But by use of the Galligan Tariff No. 20 Series, as an application sheet, that switching rate is extended subject to a minimum of 3¢ over the entire Chicago Switching District. (Tr. 1169-1170.)

Cross-examination.

By Mr. Davis:

On page 5 of Exhibit No. 76, the minimum weights shown [fol. 844] were not taken from the classification; those are the minimums of the specific commodities items published in the tariff shown on the last page of my exhibit and govern the rates there shown. (Tr. 1170.) It may be true that the traffic loads heavier than those minimum weights, not only within the district but as to line haul traffic as well. But if district traffic loads heavier than the minimum of 60,000 pounds, the ratio would be the same on both switching and line haul traffic. (Tr. 1171.)

Chairman Campbell: Are there any further questions?

Mr. Davis: I am a little doubtful as to whether or not I should go into the reasons why one district should be included and one left out. Most of the testimony of this witness is along that line, however, if we may consider that the switching limits will not be extended in the general investigation, I have no more questions to ask of the witness.

Chairman Campbell: Well, I do not want to be understood quite as broadly as that. I say, of course, whatever issues are before us will be considered. My understanding is that the question of extending the switching limits as such is not before us but the rates in the tariffs under suspension are before us.

Mr. Davis: Yes sir; and that would go to the reasonableness of those rates in so far as they are not district rates?

Chairman Campbell: Yes.

Mr. Walter: My understanding of the purpose of Exhibits 77 and 79 is to show if rates in the Chicago District are increased as proposed it will be necessary in order to

avoid 4th Section violation to change every rate named in the Exhibit as shown on the map immediately following; [fol. 845] and whether or not Chicago Heights is involved, does not have anything to do with these two exhibits.

Chairman Campbell: I understand that is the purpose of Exhibit 79.

Mr. Walter: That is the purpose of both Exhibits 79 and 77.

Mr. Cardy: That is correct. (Tr. 1172.)

Cross-examination.

By Mr. Slater:

Joliet is 23 miles from the outer edge of the Chicago District via the Santa Fe, to Gary and via the Rock Island to Blue Island and from Joliet to Summit via the Chicago and Alton is 25 miles. (Tr. 1173.) I thought those were the minimum distances from Joliet. As far as I can find, those are the minimum distances. The carriers in certain instances propose on line haul traffic to increase the car revenue to $24.00. (Tr. 1174.) The increased amounts of minimum revenue required before the carriers will absorb in the increased line haul rates, the switching in the district are in I. & S. Docket 2900.

Mr. Galligan: Yes.

Mr. Webster: Yes. (Tr. 1175.)

Mr. Slater: As to that increased revenue, I am inquiring whether it is proposed that the increased revenue shall accrue to the switching carriers or to the line haul carriers?

Mr. Galligan: The line haul Carriers.

Mr. Slater: So that in addition to the switching matter which we have before us, we have this proposal to increase all line haul rates which are less than $24.00 per car to $24.00.

Mr. Galligan: The publication of that rule in the switch- [fol. 846] ing tariff was to avoid or remove possible 4th Section violations in connection with road haul traffic moving to Chicago on low commodity rates where the earnings per car might be less under the rates as published than would result from the application of the switching rates within the Chicago Switching District. This may not increase any of these rates providing the loading is heavy which it probably would be. (Tr. 1176.)

Mr. Slater: I observe numerous commodities which move under a revenue which is less than $24.00 per car. Those would be increased to $24.00 per car would they not?

Mr. Galligan: Not necessarily; those are minimum rates and if you will notice, practically all load 18,000 to 20,000 pounds. The minimum on agriculture implements is 20,000 pounds and they cannot load over 30,000 pounds.

Mr. Slater: The result of that is the revenue on that traffic must be increased to $24.00 per car under this proposal.

Mr. Galligan: The total revenue would have to equal or exceed $24.00 per car in order to remove 4th Section violations providing the Commission grants the increase asked for in switching rates in the Chicago District. (Tr. 1177.)

Mr. Slater: I am calling attention to the fact that in addition to the increase in the switching rates, there is also presented to the Commissions the question of increasing the line-haul revenues on numerous commodities moving in the Chicago switching district.

Examiner Faul: Do I understand that that covers only the commodities where the rates are under suspension in I. & S. 2900?

Mr. Slater: That covers all traffic into Chicago.

[fol. 847] Examiner Faul: Not in so far as the Interstate Commerce Commission investigation is concerned.

Mr. Slater: Did you not suspend Lowrey Tariff 20-A or 20 series?

Examiner Faul: I say that covers only the commodities covered by I. & S. 2900.

Mr. Slater: Everything.

Examiner Faul: But the general investigation covers only switching rates.

Mr. Galligan: That is true.

Mr. Slater: You mean that is only in the suspension proceeding?

Examiner Faul: Yes. (Tr. 1178.)

Cross-examination:

By Mr. Livinghouse:

There is no proposal to increase rates up to $36.00 per car. The only proposal we have before us in I. & S. 2900

is to increase the line-haul rates up to a minimum revenue per car of $24.00, which will affect the territory shown by my Ex. No. 77, going as far east in Indiana as Michigan City, and also it is in interstate rates from points in Wisconsin on the Milwaukee-Madison line. (Tr. 1179.)

From a point around Fort Wayne and Muncie the present minimum revenue per car to Chicago is $36.00. There is no proposal to increase that minimum revenue. There is no proposal to increase rates in the switching district up to $36.00 per car. The only territory affected by 4th section violations would be that where the per car revenue is $24.00 or less.

Recross-examination.

By Mr. Slater:

The rates shown in my Ex. 75 where Chicago switching district rates are less than between Chicago Heights and [fol. 848] points within the Chicago switching district, are due to plussing those rates ½ cent on account of the acquisition of the Chicago Heights Terminal Transfer Railroad by the Chicago & Eastern Illinois. (Tr. 1180.) When the Chicago & Eastern Illinois acquired that terminal road it made the rates ½ cent higher from the Terminal than from the Chicago & Eastern Illinois on joint-line traffic. Previously they had been the same as from points on the Chicago & Eastern Illinois, and at that time it absorbed the Chicago Heights Terminal Transfer Railroad switching.

We are asking for the continuation of our present relative rate position as compared with points in the Chicago district, and are also asking inclusion of Chicago Heights in the Chicago switching district. (Tr. 1181-1182.) We want exactly the same rates existing in the district, whatever they may be, and willing to take the Chicago basis on line-haul traffic in all directions. That would increase the rates on southbound traffic and decrease rates on some of the northbound. (Tr. 1182.)

FRANK W. RENWICK, sworn, testified as follows:

Direct examination:

By Mr. McCornack:

Am president of the Chicago Gravel Company, which owns a gravel pit at Rockdale, Illinois.

Mr. McCornack: As I understand it, Mr. Commissioner, we cannot get any reduction in the gravel rates to Chicago.

Chairman Campbell: The ruling is that we are not going to consider any of those cases that involve line-haul rates that have been heard and that have not been reopened and [fol. 849] consolidated with these cases. You have made an application which the Commission has not acted on. (Tr. 1183.) For the purposes of this case I do not want you to put in that case or go into it.

Mr. McCornack: I am not going to do that, Mr. Commissioner, but I am going to rebut testimony that is in this record.

Chairman Campbell: All right, go ahead. (Tr. 1184.)

The Witness (continuing): Have heard the testimony given in this proceeding; am coversant with actual operation of gravel pit and have been familiar with such operation for 32 years. My experience with building materials includes gravel and with a few years of experience with crushed stone. Am familiar with the nafure of the gravel pits in Illinois, Wisconsin and Indiana that ship to Chicago. Have visited all of them.

There is a marked difference between the Joliet district and other pits. The character of the material produced in the Joliet district pits is very different from that anywhere else in this state or in Wisconsin or in Indiana. (Tr. 1185.) The Rockdale gravel deposit and the majority of it in the Joliet district carries a much greater percentage of stone, necessitating a larger crushing capacity. It runs higher in silt content, requiring much more washing than ordinary gravel does. The average gravel plant within shipping distance of Chicago carries 2 or 3 crushers of not very large capacity. The particular plant you refer to in Joliet has a battery of 10, all of which are busy. (Tr. 1186.)

Mr. Womer stated that production of stone involves stripping, drilling for charge, blasting, shoveling up broken

stone, transportation to crusher, crushing, then washing and screening, which is correct in the concrete. (Tr. 1189.) [fol. 850] He stated that in producing gravel there was excavating, transportation to the washer, and washing; but in the production of stone, sand and gravel in the Joliet district there is very little, if any, variation in mechanical process aside from the drilling and the shooting, in stone quarrying. Stone production has an advantage over gravel in cost of handling their stripping, which is important on both commodities. Average gravel pit stripping removes overburden from perhaps 30 feet of material, while the removal of over-burden in stone quarries uncovers what would sometimes equal 300 feet. The average stone quarry, because of its depth, has a limited movement of its material in the quarry, while a gravel pit frequently and generally extends to a mile of haulage.

Stone in the Chicago switching district is crushed more easily than the gravel of the same district, and we handle a great amount of granite, trap rock and niggerheads, which are more wearing on the parts of the machinery and require more power than ordinary limestone does. (Tr. 1190.)

Our washing, which is growing more expensive every day, has required installation and maintenance of a pumping line for a mile, a hook-up of 150 horse-power, and pipe line 14 inches in diameter, in itself a very expensive installation. We must deliver to our plant a minimum of 4,000 gallons of water per minute. After the washing process we are handicapped with the disposition of this water we have carried for a mile and taking care of the silt naturally coming out of the gravel, that being a very expensive item which does not enter into the stone crushing proposition.

When we get ready to sell our material we have handled, under the rules of the State of Illinois, 3,000 pounds of ma- [fol. 851] terial, where stone people equal the same amount of 2,500 pounds to create a cubic yard of material. The stone people have expense for their drilling and shooting, and nearly everyone knows what that amounts to. But with the gravel in the Joliet district our crushing, extra transportation, stripping and washing more than offset the drilling and shooting of stone. There is some washing on

the crushed stone in the Chicago district, but not to exceed 5 per cent (Tr. 1191), and 100 per cent of gravel is washed. The relocation of a mile of track is more expensive than one covering a quarter of a mile. A half-mile would be a liberal estimate on the quarry propositions around Chicago for main and lead-in track.

The statement that it costs the Consumers Company two or three times as much to operate their stone quarries as it does to operate their gravel pits I am inclined to say is correct. But am positive the Consumers Company has not operated a gravel pit in the Joliet district. From a competitive standpoint the production of gravel in the Joliet district presents an entirely different problem than production at other pits shipping to Chicago. (Tr. 1192.)

Comparing the stated investment of the 7 quarry companies at Chicago as being $8,500,000 with the investment in gravel pits outside of Chicago, it may be said that stone quarry or gravel pit investments are very much a matter of bookkeeping, something like the railroads before the Interstate Commerce Commission. I know of four gravel plants that can consistently carry their investment at $4,000,000. My judgment is that the $8,000,000 described for 7 or 8 stone quarries is very high. The amount of money invested in gravel pits in Zone 1 would probably be [fol. 852] on a parity with the investment in the 7 quarries in Chicago. On the question of higher land values of stone quarries within the Chicago district, I may say we have paid at least twice as much per acre for gravel land in the outside district as we have been offered stone land for in the inner district. (Tr. 1193.)

We have been doing the spotting of cars ever since the plant was built, which was before some of these stone quarries were in existence. It is a common practice for gravel people, and it is universal so far as our company is concerned. The material is weighed before it leaves our plant, at our expense. We operate either 3 or 4 engines at Rockdale, which do our spotting and deliver cars to the carriers. They make up the trains for the railroad to come in and take out. They are weighed and billed by us (Tr. 1194), but at Spalding the material is weighed by the St. Paul as it pulls out the train that we have made up. It weighs without breaking, except as they have to to meet the requirements of the Weighing Association.

The drilling machinery and the power to run it in the stone quarry is the only equipment they use in excess of anything in a modern gravel pit. (Tr. 1195.)

Cross-examination.

By Mr. Cardy:

Our gravel pit at Rockdale is the nearest one to Joliet that we operate, and is the one nearest to Joliet. The cost of mining and producing gravel there is considerable more than in producing at other pits in Zone 1. We operate a plant at Plainfield, Illinois, about 9 miles from Joliet, where we have a somewhat different proposition, as we take that gravel, or a great part of it, from under water. We have [fol. 853] a plant at Spalding that is fairly typical of other gravel plants in Zone 1. (Tr. 1196.) Our most unusual situation is at Rockdale. There is a good deal of variation in the cost of production of sand and gravel in Zones 1 and 2. Approximately 20 plants, including Rockdale, are in Zone 1, and 24 or 25 in Zone 2. The situation at Plainfield is somewhat different than at other plants in Zone 1, because of the water and heavy stripping with a short face. (Tr. 1197.) We have the actual cost figures on these plants at the offices. (Tr. 1198.)

Chairman Campbell: Well, let us not go into that cost question.

Mr. Cardy: All right. (Tr. 1199.)

Redirect examination.

By Mr. McCornack:

Plainfield is between Rockdale and other pits in Zone 1. The crushing there is a little heavier than at other plants in Zone 1 except Rockdale. (Tr. 1199.)

R. O'Hara, sworn, testified as follows:

Direct examination.

By Mr. Rynder:

Am manager transportation department of Swift & Company. Its principal packing plants in the Chicago district

are located on the Chicago Junction Railway (Tr. 1201) in the Union Stockyards district, within boundaries on the south 47th Street, on the north 39th Street, on the east Halsted Street, and on the west Robey Street, practically one square mile.

My Ex. 80 is a map prepared showing switching districts of the Chicago Junction Railway in and about what we [fol. 854] may call Packingtown. (Said exhibit received and marked "Ex. No. 80, Witness O'Hara.") (Tr. 1202.) On the map Halsted Street would be at the east end of the blue line running north and south; Ashland Avenue is one mile west, paralleling Halsted Street north and south. On the map 47th Street is south of the brown block, 49th Street is the south end of the two blue blocks, just ¼ of a mile south of 47th Street. On the map 39th Street, the northern boundary of the packing house district, runs along the north end of the brown block.

The portion of the map colored brown shows the district within which packing house plants are located. (Tr. 1203.) In the district colored brown, described as Packingtown, the two red blocks are separate districts of the Chicago Junction Railway, being the receiving yards for the Eastern and Western lines on the Chicago Junction, known as the 47th Street district and Loomis Street district. Under the rates proposed a movement from one of the small red blocks to any point in the brown block at an increased rate, the increased rate would cover some very short movements to and from points in the brown district, some, you might say, across the street; just a comparatively few feet. I refer to these as interdistrict rates. (Tr. 1204.)

Swift & Company has a movement between their packing plants located in the brown block and their plants in the blue block on the right-hand side of the map. It is less than a mile in distance, averaging probably a half-mile. We have a movement from Robey Street car shops to Ashland Avenue car shops, being from point in yellow on the left to point in brown on the right, maximum of a half-mile distance. There is a rather substantial movement from a [fol. 855] point in the blue to a point in the brown across the Chicago Junction Railway tracks to get the product of our packing houses into storage houses in the brown territory; that is less than 200 or 300 feet distance. The movements would range from a maximum of 1 mile in dis-

tance to a minimum of 200 or 300 feet, and still be interdistrict movements. (Tr. 1205.)

Ex. 81 is a statement showing the history of the rates involved. (Said document offered and received in evidence, marked "Ex. No. 81, Witness O'Hara.") This exhibit shows a substantial increase in the rates applied since 1913 to date.

We have prepared another exhibit, 82 (said document offered in evidence, marked "Ex. No. 82, Witness O'Hara"), which shows aggregate increase in freight charges that Swift & Company would pay if proposed increases in interdistrict switching rates are allowed, in the sum of $11,025.00. The exhibit shows a majority of cars moved under the $12.00 rate applicable to movement in privately owned cars, being $5.00 less than movement in railroad owned cars. (Tr. 1206-1207). The Chicago Junction Railway owns no refrigerator cars, and few others, and it would be necessary for it to call upon its parent company or outside lines to furnish cars if we did not own our own. If it furnished the cars it would have to call upon its connections if they switched them from their receiving yards at Ashland Avenue to the packing plants located at Robey Street, where they would be initially iced; they would then be switched from there to the loading point, from the loading point to the unloading point, and from the unloading point back to the receiving yard of the owning road. (Tr. 1207.)

[fol. 856] When we furnish our own cars they are initially iced at the loading dock and are really in shuttle service between the various houses in the district, that is, they are moving in both directions most of the time. We receive no allowance for the use of our cars in the switching movement on the Chicago Junction Railway other than the difference in the switching cost but nothing in the way of mileage or per diem. The Chicago Junction averages around 5½ days in the switching movement and if it furnished the cars, it would cost it $1.00 per day per car or about $5.50. The difference in switching charges in private cars is $4.00 less on intra district movement and $5.00 less on inter district movement than in railroad owned cars, which actually results in a few inter district movements of only $3.00 reduction on account of the light loading of the commodity. (Tr. 1208.) The increase in freight

charges we would pay as shown in Exhibit 82, by increasing the $12.00 column to $18.00 and the $15.00 column to $18.00. The average loading of hanging loads which means meat hanging from the roof of the car is about 25,000 pounds. Average per car of floor loading is 35,000 pounds. $18.00 per car of 60,000 pounds at 3¢ both loadings will result in 7½¢ per hundredweight on hanging loads and 5½¢ on the floor loads. It is impossible to load 60,000 pounds of meat or packing house products in refrigerator cars which are switched from one point to another in the stock yards direct. The loadings stated by me are the average loading. (Tr. 1209.) The maximum loading is controlled by the American Railway Association rule 86 which prohibits our loading more than 103,000 pounds on the rail. Average car weight is from 51,000 to 54,000 pounds which would allow a load of around 52,000 pounds in the refrigerator cars. In no instance could we load the minimum of 60,000 pounds. It is not proper to make a charge on the basis of a minimum weight which cannot be loaded. In the switching [fol. 857] movement we are discussing here, at least 90% of the refrigerator cars move loaded in both directions. The carrier very seldom performs empty haul to get the car into another switch movement. Generally speaking, the cars are under ice and there is another 6,000 pounds we cannot load in the car because the bunkers contain 6,000 pounds of ice so that cuts potential actual loading down to 48,000 pounds. (Tr. 1210.)

Cross-examination.

By Mr. Davis:

All of the movements referred to are strictly and absolutely intra state movements and not connected with inter state movements. It is my understanding, Mr. Slater, that no tariffs have been filed, proposing any changes in these rates and they are not before the Illinois Commission at this time but based on the statement made by Mr. Gallagan to the effect that these rates were not excepted from the proposal of 3¢ for 1 line, is the reason we came in to point out the effect of that. We have made search for tariffs carrying such changes but none has come to our attention. (Tr. 1211.)

Mr. Slater: Do you know of any, Mr. Galligan?

Mr. Galligan: No; only as stated in the previous hearing we considered that those rates were involved in the general investigation instituted by the Interstate Commerce Commission into all rates within the district.—

Mr. Slater: Well now, let us get that clear. The investigation instituted by the Interstate Commerce Commission concerns the interstate rate does it not, Mr. Commissioner?

Chairman Campbell: I made the statement when you were out, I believe, Mr. Slater, but while these rates were not probably involved in our investigation still it was a joint hearing and I asked Mr. Tholin and he said he thought we ought to take the testimony. (Tr. 1212.)

[fol. 858] Mr. Slater: The matter of the investigation of the Illinois Commerce Commission concerns only the suspension cases; only the tariffs under suspension and there are no tariffs suspended proposing this change, (Tr. 1212.) because none has been filed.

Mr. Slater: Mr. Rynder, it is not your opinion that the Illinois Commerce Commission has these rates under investigation here?

Mr. Rynder: Mr. Slater it is our opinion that the matter is not under investigation by it.

Mr. Slater: With the statement that no rates are before the Illinois Commerce Commission excepting those other suspensions, there is nothing before the Illinois Commerce Commission. (Tr. 1213.)

Mr. Rynder: That is what we shall contend and we are simply perhaps taking an ultra cautious position in view of the facts that have been called to your attention.

Mr. Slater: Well, I will state for the Illinois Commerce Commission that we are not considering any rates except those under suspension and these not being under suspension are not before us in this proceeding, but I have no objection, Mr. Rynder, to your naming these other witnesses who would testify in substance the same as Mr. O'Hara.

Mr. Rynder: The other two witnesses who would, if called, testify to the same effect as Mr. O'Hara are John R. Baker of the Traffic Department of Armour & Co., and R. R. Hargis of the traffic Department of Wilson & Co. (Tr. 1214.)

Mr. Davis: If you will just give us the names, we will admit that they would testify the same as Mr. O'Hara if

called to the witness stand, I see Mr. Hargis here, who else. (Tr. 1213.)

[fol. 859] Mr. Davis: Your Honor please, I think this would be as good a thing as any to introduce the composite exhibit made up by the joint conference committee consisting of representatives of carriers, the State Commissions of Indiana and Illinois and the shippers' representative, Mr. Oliver. This committee had 20 different conferences with shippers and state Commissions representatives and 118 questions were analyzed and disposition thereof made in this exhibit. (Tr. 1216.) Some 18 or more propositions that the Illinois Commerce Commisison raised were received too late to go in this big exhibit so a supplemental exhibit was made covering those points.

Mr. Slater: Mr. Davis, just so that it may be clear may it be understood that while this conference was held, a representative of the Illinois Commerce Commission was present thereat, there was no agreement made that the facts stated or purported to be stated in the Exhibit are facts that are accepted in full by the Illinois Commerce Commission. I do not want it to appear that we have agreed or that the Illinois Commerce Commission has agreed that these constitute all the facts or that the information set forth therein gets all the facts and that they have been approved by the Illinois Commerce Commission.

Mr. Davis: I think that statement is correct. You had a Representative.

Mr. Slater: Yes.

Mr. Davis: And this represents the judgments of the representatives you sent there. Whether it was complete or not they had the opportunity to say and I think their answer will show that it was not complete.

Mr. Davis: There is a foreword in the main exhibit that explains the entire situation. (Tr. 1217.)

[fol. 860] Mr. Walter: Would it not be fair to say that the shippers' position would be stated if a witness was on the stand as there shown, and that the carriers' position would be stated if a witness was on the stand as there shown?

Mr. Davis: I think that is correct.

Mr. Tholan: That would be the position I would take as representative of the Illinois Commerce Commission, but

in no way binding the opinion of the Illinois Commerce Commission.

Mr. Livinghouse: And the same is true of the Indiana Commission.

Chairman Campbell: It is understood that this is evidence and no one who comes to pass on it is bound by it. Will these be introduced without putting a witness on. It is pretty well self explanatory, is it not? (Tr. 1218.)

Mr. Davis: Yes, it is self explanatory.

Chairman Campbell: These 2 documents will be received then as Exhibits 83 and 84; 83 the large one and 84 the one made up because of some supplemental questions as explained by Mr. Davis; and they were thereupon received in evidence, marked "Exhibits 83 and 84." (Tr. 1219.)

C. W. GALLIGAN, recalled, testified as follows:

Direct examination.

By Mr. Davis:

At the hearing in these proceedings in May of this year, I introduced Exhibit No. 64 which showed the exceptions of certain commodities carried in my tariff, (Tr. 1220) and stated in response to an inquiry of Chairman Campbell, it was the intention of the carriers to increase all switching rates in the Chicago district to a basis of 3¢ [fol. 861] single line, 3½¢ for 2 lines and 4¢ for 3 or more line hauls, with certain exceptions as to waste material such as slag, cinders, quarry strippings, etc.; and some few other commodities in connection with which individual roads would make a statement for the record. I was requested to submit an exhibit showing the present rates, rates proposed by carriers and the exceptions to the general basis which was very hurriedly prepared, showing this information and contained a great many errors which I said we would carefully recheck in the exhibit and file a supplemental one at the next hearing. After more careful study, the carriers decided to rework the exhibit and file a new one, setting forth in greater detail the present rates, the proposal of the carriers as to what rates they desired to suggest under the general investigation, I. C. C., Docket

19610. (Tr. 1221.) The new Exhibit has been distributed and numbered 85 and the carriers desire to substitute this for Exhibit No. 64 filed at the previous hearing. Exhibit 85 is prepared in different form from the previous exhibit and shows the rates alphabetically by commodities. It shows the commodity, the railroads from and to, the present rates and the proposed rates, the proposed rates being in keeping with the suspension. The carriers propose to publish these rates provided we are permitted to increase the rates as previously proposed. Tariff authority for the rates is also shown. The Exhibit was offered and received in evidence, marked, "Exhibit 85, Witness Galligan," (Tr. 1222.)

Cross-examination.

By Mr. Slater:

Page 3 of this exhibit shows rates from 2½¢ to 3¢, applying on all commodities between all Chicago Junction stations from 2½¢ to 3¢ except as to refuse and cinders and these figures and items are exactly as they were given to us by the representatives of the roads whose figures [fol. 862] are shown. Some of the changes shown in the Exhibit are those proposed but not published and filed with the Commission at this time. (Tr. 1223.) This exhibit is set up in a different shape. It shows present rates and what the carriers propose in the next column and then following down the column the rates are prefixed, some by an "A" and those are rates under suspension in I. & S. Docket 2900, indicating the rates published, filed and suspended. The letter, "B", indicates the rates that are proposed to be published in keeping with the rates under suspension or in other words, what is proposed under the general investigation. The rates indicated by "B", as proposed, are before the Interstate Commerce Commission at this time under the general investigation but are not before the Illinois Commerce Commission in tariff form. The particular rates you mentioned in the exhibit are on wholly intrastate (Tr. 1224) traffic but we were asked by the Commission to file an exhibit showing what the carriers proposed and that is what we have filed in response to Chairman Campbell's request. I cannot make a general statement showing why some of these commodities are not pro-

posed to be increased or a general statement as to why those exceptions are made. As stated a moment ago, we called into conference with the committee at our office, representatives of each individual carrier in the Chicago District and asked each representative to check over his tariffs and state what rates were proposed to be increased and if there were exceptions, to indicate those, and they are indicated in this exhibit. (Tr. 1225.) I would like to have Examiner Faul give me a representative case to pick out an item and see if I can tell about it.

Examiner Faul: Well, I am asking for general informa- [fol. 863] tion from this standpoint. Suppose, when the Commission comes to decide this case it should determine to put all commodities under the Lowrey basis and it had no testimony on some one particular commodity that you propose to except, it would require some testimony and it seems to me we should have some before we can except any one particular commodity if you are going to have a general Lowrey basis for all rates. (Tr. 1226.)

Mr. Davis: I agree with Mr. Examiner, but then it would go to that basis unless there was evidence in the record to show that it should not go; and then that would depend upon your judgment, the Commissions' judgment, as to whether or not even that testimony was good enough to keep them in line.

The Witness (continuing): You will find in this Exhibit, Mr. Examiner, taking the first page, all commodities, with certain exceptions there is refuse, cinders—except iron and steel articles, except coal tar and coke, and then it says Chicago Junction—from connecting lines to industries present 2¢, proposed no change. That is on page 3 of the Exhibit. As to the exception of coal tar, coke, etc., you will have to ask for a representative of the railroads involved to state the reasons for the exceptions. But in many instances where you find no change between connecting lines and industries or between industries and connecting lines, it is a proportional rate to the junction point with another railroad (Tr. 1227), where the traffic is undoubtedly destined to a team track on another line. Team tracks do not always take the industries rates and they have a proportional rate to move traffic from a team track on one line to a connection on another that is destined to an industry or the re-

verse movement of that, originating at an industry on a [fol. 864] certain line moving to a connection and destined to a team track on another line. It is a combination rate. There are no 2 line rates that cover that. These rates they do not propose to change because the combination would be higher than the general basis, the so-called Lowrey basis; it would in all cases be higher.

Direct examination.

By Mr. Connell:

The item on page 3 proposing to except coal tar, coke and those other items shown in the left hand column was given us by representatives of the Chicago Junction Railway and representatives of other railways shown on that page. The heading is "All commodities not otherwise specified herein." (Tr. 1228.) And that is the way the tariffs read today, providing for certain exceptions, and with the exception of the commodities referred to by the Illinois Central at the previous hearing, the carriers are not proposing any exceptions to the Illinois basis.

Examiner Faul: Referring particularly to page 1060 of the record where the witness Furry stated among other things that Mr. Roberts testified the previous day regarding movement of tar from South Chicago to their plant on the Chicago & Illinois Western, and said that one of the carriers was willing to continue the present rate of 2½¢ where the Chicago & Illinois Western was the delivering carrier, and Mr. Furry said that the Illinois Central, if other roads desire to continue the rate, would be willing to join them and that it was his view that the rate should be continued. (Tr. 1229.)

Now why should that rate be continued. I do not see anything in the record that explains why carriers should want to make an exception on tar and that may be true on other commodities. (Tr. 1230.)

[fol. 865] Mr. Connell: Well, Mr. Examiner, as I understood the record at that time, the Illinois Central was the only carrier proposing to make an exception on tar and these other commodities.

Chairman Campbell: The point is. You propose a Lowrey basis; propose to increase all rates as to the Lowrey basis except where you make exceptions. If you make these ex-

ceptions without showing any reason can the Commission recognize those exceptions or should it not use such exceptions for the purpose of showing that you have not justified the increase on other commodities. That is the point.

Mr. Connell: I understood Mr. Furry to testify as to the reason why they wanted to make those exceptions.

Chairman Campbell: But there are several roads in there. It is not only the Illinois Central. The point is, are you going to rest simply on that statement of exceptions without showing reasons why either from a transportation or from a competitive standpoint (Tr. 1230), or some other standpoint, those commodities should be treated any differently than any other commodities.

Mr. Davis: I think I made this statement, we think we have proven that the 3¢, 3½¢ and 4¢ rates should go in as a general basis; perhaps something higher than that, but at least that and that should include all commodities. If there is any individual road having excepted commodities, it is for it or the person representing it to show that that commodity should be treated differently from the general basis. If there is not any such offer of proof made as to why a commodity should have a lower basis than the general one, then I think all the record shows is that it should have the general basis.

Mr. Slater: That may be the position taken by the car-[fol. 866] riers insofar as the general investigation and the Interstate Commerce Commission is concerned but insofar as the suspension case is concerned before the Illinois Commerce Commission, the burden of proof is on the carriers and your proposition would shift it back to the shippers.

Mr. Davis: No it would not. We have proved in this case that the 3¢, 3½¢ and 4¢ rates are the rates that ought to be applied to the district as a whole.

Mr. Walter: You mean you think you have so proved? (Tr. 1231.)

Mr. Davis: No, I say we have. Now, we have not that burden of proof.

Mr. Slater: That is, you expect the Commission to order those carriers who are willing to accept their present rates to increase them to 3¢, 3½¢ and 4¢?

Mr. Davis: If you want to have a uniform basis and go by the facts of record, yes. (Tr. 1232.)

Mr. Slater: Take the Chicago River & Indiana, under the designation "B". Between all their stations the present

rate is 2½¢. In the tariffs under suspension there was no proposal to increase that to 3¢ and are now asking that 3¢ be substituted or is your proposal to leave the 2½¢ rate as it stands today. (Tr. 1234.)

The Witness: That rate is not under suspension and we made no change.

Mr. Slater: You propose to leave it as it is. Now my question went to this, whether you propose now as a substitute for that which you have named in the tariffs under suspension the fact that in the general investigation the Interstate Commerce Commission is asked to make the rate 3¢.

[fol. 867] The Witness: Yes, that follows my previous statement in response to Chairman Campbell's request as to what we wanted; there were certain rates published and filed and under suspension and others that were not changed at the time. In response to the Commission's request, I stated it was the desire of the carriers to advance all rates within the Chicago District to the basis of 3¢, 3½¢ and 4¢, and here is one in those advances following that statement where we advance the rate of 2½¢ not previously advanced, nor under suspension to the 3¢ basis to make it uniform. (Tr. 1235.)

Only by checking Ex. 85 could you determine whether the suspended rate is 2½ cents and the proposed rate under the circle reference B is 3 cents and are before these commissions in these respective cases. I do not think there are many such, but it would be difficult to determine that because it sets them out in three ways: first, the present rates; the proposed rates indicated by an A, which are under suspension; and B is what the carriers propose in keeping with the general announcement that we desire to advance the rates to 3 cents, 3½ cents and 4 cents. (Tr. 1236.)

Chairman Campbell: Mr. Galligan, I think we will suspend your cross examination now until there has been a little more opportunity to examine the exhibit.

Mr. Walter: The situation we have just been going into, Mr. Commissioner, seems to me fully justifies our request for a cost study on the Chicago Junction Railway. Here they propose increases on the Chicago Junction without any cost study at all or any other evidence. (Tr. 1237.)

HENRY W. BYERS, called in behalf of respondents, was sworn and testified as follows:

[fol. 868] Direct examination.

By Mr. Gault:

Am freight traffic manager of the Chicago & North Western Railway Company, and with that company for 45 years, having been in its traffic department that entire period. Am familiar with the Chicago switching district and the situation therein, the rates and charges applicable, and have been for a good many years.

In 1910 shippers and carriers formulated a tentative agreement as to what should prevail within the proposed Chicago district, and after it was perfected it was turned over to six railroad representatives as a committee, of which I happened to be the chairman, to convert this understanding into tariff form (Tr. 1238), and it took us from May, 1910, until about August 1, 1911, before we succeeded in having the tariffs filed and effective. Since then I have served on various committees dealing with Chicago switching district, and beginning with the arrangement perfected in 1911, there was established a joint conference committee between shippers and carriers, and up to the war period Mr. Ingalls was chairman, at which time I was made chairman of one section. I have been in close touch with the switching district situation for a good many years.

Prior to August 1, 1911, there were as, I recall, 42 roads in the Chicago district, each publishing its individual switching rates. There were no joint rates applicable between one industry on one railroad to an industry on another. (Tr. 1239.) The individual tariffs were made by each road according to its local conditions. A shipper wanting to ship a car from his industry, served by a given railroad, to an industry served by another railroad, had to determine the road that would perform the service from origin point to destination point. He was supposed to be familiar with the routes over which cars moved, and was [fol. 869] required to add all charges of the various roads participating in the through service. An extremely chaotic situation existed; and a shipper not familiar with the car movement might discover thereafter that an intermediate

carrier was involved, and be obliged to pay charges of three carriers instead of two. Again, certain carriers published rates on marked capacity of the car; a switching charge, as an illustration, of $4.00 per car marked capacity, if not in excess of 80,000 pounds; in excess of that there was a penalty of $1.00 for each 10,000 pounds, and a man using a 100,000-pound marked capacity car, though not needing it, had to pay $2.00 more than if freight had been loaded in a 80,000-pound car. There were certain situations where the shipper had to pay the per diem when it was involved (Tr. 1240); in other instances for the empty movement.

The Chicago & North Western had its switching charges on a different basis at the 40th Street yard, where we interchanged with the Belt, than at Wood Street, the latter usually being 50 cents per car higher when cars went beyond 40,000 pounds, and perhaps 50 cents per car lower when under 40,000 pounds. These differing situations and conditions meant that the shipper could not figure in advance his total charges for the movement of a lot of freight. He did not know the capacity of the car he would get, and probably was not familiar with the channels through which it was customary to handle the business. (Tr. 1241.)

The situation created a strong desire for uniformity and it had much to do with the bringing about of the so-called Lowrey agreement, which later went into effect. The switching rates later becoming effective were built upon the rates already existing, and there was no real measure for them, each road having its own figures, which generally [fol. 870] speaking were different; and the desire for uniformity brought about the tentative agreement in 1910, and the desire to put various shippers throughout the district on a parity. This brought about the so-called all-commodity tariff issued in August, 1911, and which applied to all commodities without exception excepting coal, coke and grain. These rates were not based upon a cost study, as we had no method for cost figuring in those days. We had no Interstate Commerce Commission formula, such as today, for our guidance. Different roads would have had different formulas. There was no uniform method dealing with actual cost. (Tr. 1242.) We tried to harmonize as far as possible the rates then in effect, with many elements to reconcile; some believing switching

should be free, others that carriers were entitled to something, and carriers figuring that they should have a uniform basis that was compensatory. Out of all that grew the rate at that time 1½ cents per 100 pounds, 60,000 pounds minimum. (Tr. 1243.)

Since that time there has been a material change in the location of industries. In 1910 the greater interchange was through what might be today the downtown yards. Using our line as illustrative, our general interchange was at Wood Street, but it, like others, has moved its interchange yard to an outer location and now known as an outer yard. There have been changes in this respect and also in the development of industries in the Chicago district.

Since 1910 substantial developments have been made in the Central Manufacturing District and the Clearing District, the trend of industry development in the Chicago district having been towards the southern boundary of it (Tr. 1243); the Central Manufacturing District, South Chi- [fol. 871] cago, and the suburban stations that lie in the direction of Gary. As a consequence the average haul is much greater today than it was then. Again using our line, in 1910 we did not have our big grain elevator in South Chicago at 118th Street, with its capacity of 10,000,000 or 12,000,000 bushels. Consequently the grain that today goes through that elevator materially increases the average haul of all carriers participating in the movement of that grain. This is merely one example. That is the way you get large industries located, with heavy tonnage.

There has been a decided tendency for industries to develop or locate toward the outer rim of the district, largely because of labor questions and service which of necessity cannot be performed through the so-called downtown yards or via the hub of the district. (Tr. 1244.) With respect to so-called outer zones, the agreement of 1910 covered intradistrict switching between industries with individual sidetracks, applicable to all commodities excepting coal, coke and grain, located within the following boundaries: On the north side, Clybourn and Deering: that is, Clybourn on the North Western and Deering on it and the St. Paul; Mayfair on the St. Paul; Cragin on the North Western & St.

Paul; Galewood and Wilson Avenue on the St. Paul; 40th Street on the North Western; and then the south side facilities at 16th and Wood Street. Prior to the time the tariff went into effect the switching district was not beyond the points I have just mentioned. That was the local switching district of the carriers of the city of Chicago.

The territory immediately beyond was in the Milwaukee rate group, taking Rogers Park, Illinois, as an example. Desplaines was in that group, and then around westerly beyond 40th Street stations like Oak Park or Proviso, now in the outer zone, of the Chicago district, were then in the [fol. 872] Aurora group, and Aurora was the 110 per cent point with respect to rates to and from Eastern territory. (Tr. 1245.)

And to bring about a Greater Chicago proposition, the Northern carriers increased the scope of the territory on road-haul traffic, which became known as the "outer zone." As to local Chicago intradistrict traffic, the so-called outer group or zone was not included in the adjustment of the former, which was on the basis of 1½ cents, 60,000-pound minimum. After the establishment of the $9.00 rate between the small groups, certain industries requested inclusion therein, but the carriers under the rate basis felt it was not possible or consistent for them to extend the $9.00 rate and increase the zone by inclusion of the outer group without additional compensation. We made certain adjustments with shippers, taking the Greenwood line as an example, with the understanding that the rates between two points within the Chicago district, plus ½ cent per hundred pounds, minimum 60,000 pounds, would govern thereafter to that line.

A very bad situation remained in the part of the territory not covered by the so-called 1½ cent rate plus. (Tr. 1246.) Taking Jefferson Park, just before Mayfair, on our line, as illustrative, which would be typical of all other stations not provided for under the 1½ cent plus, a shipment from South Chicago to Jefferson Park, when it came to the rate, could take our Chicago-Des Plaines rate or the Chicago-First station beyond Des Plaines rate, absorb the switching charge from South Chicago and produce one result; and from a point in Indiana, beyond the district, to Chicago, you could take the rate and figure on the absorption by the road-haul carrier of our terminal charges, and that would produce another result from South Chicago to Jefferson

Park; or a different result, perhaps, from Chicago to May-
[fol. 873] fair, by adding Illinois distance rate from May-
fair to Jefferson Park.

We had to figure rates many ways to determine the tariff rate properly applicable, with nothing consistent about it, and no one could claim it to be a desirable arrangement. We wanted to get away from it, but we have never been able to do so and produce something that was satisfactory to the carriers, because if so, it would not satisfy the shippers.

Speaking of the original 1½ cent, 60,000 pounds minimum, shippers wanted it extended to include points in the outer zone. (Tr. 1247.) We would like awfully well to do that and provide an all-commodity rate on a uniform basis, and might well consider the proposition provided we were given a compensatory basis, one at least no lower than that which we are asking of the Commission today. I think it should be somewhat higher, but that is for the Commission to decide. Such uniform basis would apply throughout the district, as indicated on Ex. 15. The distinction in the Chicago district between the inner and outer zones, so-called, in the application of industrial rates within the Chicago district was that, with some minor exceptions, practically the inner zone of the north side roads and the inner and outer zone of the south side roads were to be embraced in the district. (Tr. 1248.) It is my thought that we should take the inner zone of the north and south side roads and the outer zone of the north and south side roads and have a uniform district; and throughout that, apply the rates we have proposed as a minimum, at least for movements between two industries having their own facilities. It would simply be an extension of the original plant to include the outer zone, but heretofore excluded, but which has either been provided for with joint through rates or where it did have such through rates they were on a ½ cent plus basis. (Tr. 1249.)

[fol. 874] Cross-examination.

By Mr. Walter:

The Lowrey basis of rates has been in the interests of shippers and carriers, and naturally so when we consider the commercial growth within the district because of the adjustment. From that standpoint the principles of that

basis were good for both carriers and shippers. But from the standpoint of compensatory rates I do not think our rate adjustment has kept pace from 1910 to the present. (Tr. 1249.) The tentative agreement of 1910 becoming effective in 1911 went along without change until 1918. The $9.00 rate for a two-line haul reflected in those days about a combination of the normal local switching rates, just about the combination. At that time we had rates of $4.00, $4.50 and $5.00 per car. If that rate today, based on existing local rates, the two-line haul would be $30.00 per car. We have not kept pace with the cost and the development, and even though the $9.00 basis was not satisfactory to the carriers, the shippers were demanding a "Greater Chicago" and we were asked to "take the thin with the thick" whenever we asked for some consideration. At times we were told in negotiations that we were entitled to compensation, but we could never quite make the grade. There was always delay and something would happen. This is not a new story, of course, and I do not want to go into it in too great detail, but what I mean is this (Tr. 1250): We have been trying for many years to get this structure on a more reasonable basis for the carriers and we have always been just shoved back. This rate basis was made in 1910, carried until 1918, and in 1928 has not kept pace with changed conditions, not only in the immediate territory but the country as a whole, as to costs and everything else. It is a stiff dose for the railroad to take when they constantly lose [fol. 875] money on the handling of this terminal business.

In 1922 the 10 per cent reduction did not change the 2½ cent rate because of the disposition of fractions. (Tr. 1251.) The railroads were primarily developed for line-haul traffic and did not have in mind a switching district. When the Chicago & Galena Union was built the whole operation was at Canal and Kinzie Streets. And as it is today, when industries located they selected originally the line that they expected to patronize and located close to it for economy of operation and depended upon an inbound supply of raw material, choosing the line that would bring that raw material to Chicago. Taking grain elevators, as an example. In 1862, using grain movement as illustrative, our grain elevators for the old Chicago & Galena Union, now Chicago & Northwestern, stood about where Butler Brothers are located, over near the Union

Depot. (Tr. 1253.) That was Grain Alley; all grain centered there, but it could not be carried on in Grain Alley today. That condition, along with the establishment of the Lowrey basis, has resulted in industries locating anywhere in the switching district where land and labor were available, where they could be closer to the breakup yards of the carriers; but I do not know whether that has resulted in economy to the carriers. One of the main ideas for the development of the Chicago district—and there is no question but what Chicago has very greatly benefited by the Lowrey basis of rates—because generally speaking an industry can locate at South Chicago or Des Plaines or Greenwood or Oak Park or anywhere within the district, with some exceptions; but generally speaking it matters very little within the Chicago district where an industry locates so far as the rate adjustment is concerned. (Tr. 1254.) If we can harmonize this throughout it will still be better than before, but in so far as the service is con- [fol. 876] cerned, the carriers of course have had to extend themselves very considerably in the later years, particularly since the development showed greater tonnage with a tendency toward greater length of haul, and for the carriers to perform the same thing today that they were able to do in 1910 they have had to extend themselves. (Tr. 1255.) Originally our yards lay close to our passenger station, but with the congestion and growth of business and the development of the Lowrey basis, those yards were extended outward, and now our principal outer yard for road haul is at Proviso and our interchange yard for Chicago district business is at 40th Street. (Tr. 1255.)

The development in location of industry in the outer district of Chicago has not brought those industries closer to our break up yards or makeup yards on our outbound business. It would be farther away, because the development has not been in that direction. As stated before, the development has been in a southerly direction, south of the downtown district and toward the Gary district. I do not know that the plussing of the Lowrey basis by our road to the territory I have mentioned has turned industries away from our rails and resulted in longer hauls than when the traffic had to go to or from industries on the North Western. That ½ cent plus is applicable only on intradistrict movement. It does not apply on road-haul traffic. (Tr. 1256.)

As to an industry desiring to secure its raw material in the Chicago district and located on our line, would be at a disadvantage to the extent of ½ cent in the territory where this plus charge exists. (Tr. 1257.)

We acquired the elevator at South Chicago in 1912 or 1913. We bought the property, built the elevator and own the rails, but the elevator is leased to someone. The in- [fol. 877] dustry rails to the elevator do not go with the lease, and we maintain the industry tracks for the elevator. Industries generally on our line furnish their own industry tracks on their property (Tr. 1258), which is generally true in Chicago, that the industries furnish their own tracks.

With reference to the outer zone of the Chicago & North Western or St. Paul, I believe if the measure of the rate, the switching rate, in Chicago is reasonable, it is far preferable that a single rate apply in the district; and if we are accorded a rate not lower than that before the Commission now, we should make it a flat basis applicable throughout the inner and outer zones. (Tr. 1259.) If we do not get the advances in the rates I would not subscribe to taking the plus off. My objection to one switching charge throughout the entire district is that the present rates are too low, but if increased to a proper basis, that is, a compensatory basis, then it should be uniform, but on a non-compensatory basis we do not want to spread our losses. (Tr. 1260.) If an analysis of the cost study should show that the present charge under the Lowrey basis is reasonable and no increase justified, I would not be willing to abolish the plus charge until I was satisfied that the cost study covered our cost and enabled us to proceed on a compensatory basis; and one reason we have not been willing to do what you suggest is because we realized we were not making money on the business we were handling. To increase the scope of the territory and increase the business would naturally increase our losses.

Mr. Walter: But now, if an analysis made of a cost study conducted by your people showed that you were getting enough money on the rates of 2½ cents or 3 cents, would you not say that your arbitrary ought to come off? That [fol. 878] is, as being unfair to you and unfair to the industry already on your rails? (Tr. 1261.)

A. We would much prefer to see a uniform basis if we can harmonize conditions and maintain a proper relativity of rates; and an adjustment of rates between two points

in the district may have a bearing on the rates from a point within to points without. This must be taken into consideration. (Tr. 1262.) The switching revenues of all railroads in the District is very small compared with the revenues of the railroads on traffic they haul coming into or going out of Chicago. (Tr. 1262-1263.) The policy of a railroad is to be helpful and it is a partnership proposition if the manufacturers along the railroad do not thrive, obviously that railroad has no business to handle. (Tr. 1263-1264.)

Cross-examination.

By Mr. Brown:

The Chicago Northwestern switches cars of grain in and out of our elevator at Irondale. Our length of haul varies, Mr. Brown, depending on what we have to do with the car after we get it, whether we take it direct to the elevator or into the yard and hold it, shunt it around, etc.; we have 19 miles of track in that yard and the distance from the Indiana Harbor Belt point of interchange to the elevator may not be more than a few hundred feet, probably about 500 or 600 feet, and whether we run the car around the whole 19 miles, depends upon what you tell us to do with it, but the distance between the Indiana Harbor Belt point of interchange is less than a quarter of a mile, that is, it might be. (Tr. 1267.) But we have to shunt cars around that we cannot run right up to the elevator. I mean that we cannot, the minute we get a train of grain from a connecting carrier, either the Indiana Harbor Belt or the Belt, move the train load and run it up to the elevator [fol. 879] for unloading, though we often do. If the elevator needed cars or wanted the particular grain, we would, but that would displace cars standing in the yard, setting them out of turn. We do not necessarily handle cars in the order in which they are received. And presumably we would not have 19 miles of track at the elevator unless we had 19 miles of business to perform around it.

Redirect examination.

By Mr. Gault:

As to what I have said regarding the plus territory, I know that all of the railroads except the Burlington are

agreeable to going along with that sort of a proposition. I do not mean to say the Burlington is not agreeable, but it wants a little more time to look into it.

Recross-examination.

By Mr. Walter:

Mr. Walter: Well, will someone make their position known during the course of the hearing.

"A". I assume so.

Mr. Davis: Yes.

Mr. Walter: All right.

The Witness (continuing): The Burlington having so small an interest involved, I think we will get an affirmative answer, I do not doubt that at all. (Tr. 1269.)

E. F. Rummel, called in behalf of respondents, was sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am assistant general manager of the Chicago, Milwaukee, St. Paul and Pacific Railroad, at Chicago, have had 33 years of railroad experience, practically all with the Milwaukee and have had experience in the terminals at Minneapolis, Milwaukee and Chicago. Have been a division superintendent on different divisions of the Milwaukee Railroad. (Tr. 1272.) From my experience and observa- [fol. 880] tion, a car would be more likely to receive a greater amount of damage while in the yards than when out on the division. In terminals, switching of every train is required to classify cars for different districts, freight houses, team tracks, industries, and cars going to connecting lines. Every car is rehandled several times and the same is true of cars loaded at industries, freight houses, team tracks and deliveries from connecting lines. They receive more handling than a car moved in a road train delivered at a way station, team track or industry. There is more opportunity to damage a car in a terminal where it receives so much handling. The movements are faster, an engine will handle a

cut of from 25 to 30 cars, while on the road in setting them out, they handle but 2 or 3 at a time. In terminals they have to kick the cars in, on the road they shove them in with the engine. In terminals they work a great deal faster because it is necessary to make connecting line deliveries at certain times for certain trains. (Tr. 1273.) When a road train is delayed, it is necessary to work faster in the terminal to make proper delivery of perishable freight to freight houses or to foreign connections. (Tr. 1273.)

The opportunity in the terminal for side swiping is greater than in road haul movement. A switch crew foreman will take a cut of 30 cars, classifying them on 10 different tracks, probably moving them on 5 different tracks at the same time. Sometimes, misjudging the speed of the car he cuts off, another one is cut off and the first is not in the clear and so he side swipes it; which happens a great many times. (Tr. 1274.) We keep a record which shows there is more opportunity for damage to equipment while in terminals or terminal service than there is while on the road. We keep these records to show all damaged cars, [fol. 881] how they are damaged and who is responsible, in connection with the system of the Milwaukee road, in regard to rough handling, the object being to locate where the rough handling occurs, who was responsible and for the purpose of correcting any bad practice that may exist. The Milwaukee road has its system divided into 4 districts with a man in charge of each district, whose business it is to find out where the rough handling, if any, occurs. (Tr. 1275.) We have district meetings and division meetings of superintendents and train masters, yard masters, train men and engine men are invited to attend and the rough handling of freight cars is discussed and figures produced. In the assignment of repairs to cars, it is divided in two places, the yard or terminal and the road, being separated between road haul and terminal. In that connection, we have 4 large terminals, at Kansas City, Chicago, Milwaukee and Minneapolis, and a lot of small terminals out on the road. I have the record for July in the Northern district which is comprised of 6 road divisions and 1 large terminal, the Twin Cities, (Tr. 1276) which shows that there were 10 cars damaged in the Twin Cities terminal and 3 in the small terminals or 13 as compared with 2 damaged on the road. The record for the middle district, consisting

of 7 divisions and 1 large terminal, Milwaukee, Wisconsin, shows for the month that 40 cars were damaged at Milwaukee, 3 at Madison, 7 at La Crosse, 3 at Beloit, making a total of 53 in terminals for that month compared with 27 cars on the road. The Southern district is made up of 7 road divisions and 1 large terminal, Chicago. The figures I am giving are for the month of July, 1928, the record for July shows 110 cars damaged in the Chicago Terminal, 15 in the small yards such as Savannah, and Nahant, 9 at smaller yards on the Iowa division, 7 at Kansas City, and 5 at Sioux City terminals or a total of 146, compared with [fol. 882] 28 on the road. When I say damaged on the road, I mean between terminals. They are damaged on a road train between the terminals. I do not have the number of cars not damaged at all. Now as to the lines including everything West of Mobridge, South Dakota, to the Coast, (Tr. 1278) the figures for July show 9 cars damaged in terminals, those are the smaller terminals, as compared with 29 damaged on the road. For the month of February, March, April, May, June and July, 1928, the records show a total of 126 cars damaged on the road in the Southern district, (Tr. 1279) for which Chicago is the main terminal and 1,026 damaged in the terminals during the same period, giving a percentage of 89.7 damaged in the terminals against 10.93 damaged on the division. For January, 1928, 252 cars were damaged in the Chicago terminals against a total of 300 damaged on road haul in the Southern district. The Southern district includes the Des Moines division from Des Moines to Spirit Lake, Herndon and Madrid, practically covering Central Iowa. (Tr. 1280.) The Dubuque division, the Illinois division, the Iowa division, the Kansas City division, Western Iowa and Eastern South Dakota division and Terre Haute division. There were 288 cars in the month of February requiring repairs in the Southern district, of which 230 were damaged in the Chicago terminal. (Tr. 1281.) For March, 184 cars were damaged in the Southern district, 156 being in the Chicago terminal; 173 in April, 134 being damaged in Chicago; 147 in May, 99 of which were damaged in the Chicago terminal. (Tr. 1282.)

I have no figures showing the damage to these cars or the number of cars in the cost study that had to go on the repair track while carrying a load but all the cars I have mentioned as being damaged were on the repair track.

Chairman Campbell: We adjourn at this time until 9:30 [fol. 883] o'clock tomorrow morning, September 19, 1928, daylight saving time. (Tr. 1284.)

Hearing reconvened at Chicago, September 19, 1928, at 9:30 A. M.

C. W. GALLIGAN, recalled, testified as follows:

Cross-examination.

By Mr. Walter:

The first line in Exhibit No. 85 refers to the Chicago Switching District as shown on the map. (Tr. 1286.) The first line says "switching rates in the Chicago Switching District." That is the district as defined in the map and the tariff, and, "and between points in the Chicago and Chicago Heights District," between Chicago and Chicago Heights, because those rates are involved in the I. & S. Docket. The "Chicago" as 1 point is the Chicago Switching District. (Tr. 1287.) There is no difference between the Chicago Switching District and the Chicago District insofar as my exhibit is concerned. Those two terms are interchangeable and embrace the territory within the boundary lines of the district as defined on the map and as set out in our tariff. There is no real definition for the balance of the district, although it is commonly referred to as the Chicago District, including Gary and points outside the district. (Tr. 1288.)

My exhibit No. 85 presents in the record a statement of all rates less than the Lowrey basis which are proposed to go to the Lowrey basis or where any change is to be made in the rates less than the Lowrey basis and page 3 of the exhibit for example, covers all commodities not otherwise specified in this exhibit and insofar as the Chicago Junction Railway is concerned, the first exception is "except re- [fol. 884] fuse and cinders", and it applies on all commodities except those items between any points on the Chicago Junction where the present rate is 2½¢. (Tr. 1289.) In some respects, I am testifying in behalf of all of the respondents in the investigation but in this case, the Commissioner asked me to furnish a statement showing

present rates and the exceptions and what the carriers proposed to do under the general investigation. This information was compiled by representatives of various lines in the Chicago district, made up in statement form and turned over to the Chairman after instructing just how it should be prepared and it was then printed and placed in the form of an exhibit. I did not personally make up these exhibits. This exhibit I presented in behalf of the committee of carriers and the exceptions claimed are not advocated by all carriers (Tr. 1292), and I am not attempting to give reasons for those exceptions. The cost study does not take out of the general cost study certain commodities which some carriers propose to carry on a lower rate because it costs less to move them than it does the general commodities included in the cost study. The cost study covers all commodities. (Tr. 1293.)

Mr. Walter: My question is this, are you able to say that rates less than the Lowrey basis may not be in many instances due to the fact that the traffic would not bear so high a rate as the Lowrey basis.

The Witness: How's that?

Chairman Campbell: Well, we have a question before us on the record now, let us have it answered.

The Witness: I do not know the reason for carrying rates lower than the Lowrey basis, whether it was because they thought the traffic would not stand it or whether they thought the costs would not justify a higher basis or not; but I do know from my own handling of these matters in the Chicago district that it was largely a question of taking [fol. 885] out some particular commodity and favoring some particular shipper. That is my understanding of it. It was favoring some particular movement. (Tr. 1296-1297.)

Mr. Walter: In other words, the carriers in this district have for years and years maintained rates for the sole purpose of favoring the shippers on a particular commodity, that is your answer as I understand it. Is that a fair statement of your answer. (Tr. 1297.)

The Witness: No.

Mr. Walter: Then wherein is it wrong?

The Witness: I said I knew from my own general knowledge that when these rates were made they were made for giving somebody a little better than the general basis, and

when it is lower than that it is favoring one particular movement or one particular shipper. (Tr. 1298.)

Mr. Walter: So that as I understand it has no reference to the fact that it costs less or that the traffic could not stand the Lowrey basis, but it was solely for the purpose of giving the shipper of that particular commodity a lower rate than other shippers in that particular district. Now is that your answer, Mr. Galligan? (Tr. 1298.)

The Witness: I do not know anything about what it costs, because as I stated before, I know of no cost study having been made, and I do not know anything about what the traffic would bear.

Mr. Walter: If you do not know those essential facts, why do you say that the purpose of the carriers was to give an advantage or a favor to a particular shipper?

The Witness: The argument may have been offered that it was about all that the traffic would stand, but without a cost study, how would they know that was all the traffic would stand. (Tr. 1299.)

[fol. 886] The rates less than the Lowrey basis are on a different basis than the general one. I did not say I thought that was done to favor a particular shipper. I did not say I thought it was done to give a more favorable basis. I said the action spoke for itself. It is a lower basis than the general basis. The result is that that particular shipper has a more favorable rate than the other shippers, but I am not prepared to say those exceptions are justified by what the traffic would bear or upon the cost.

Mr. Walter: All right, then I move to strike out all of his preceding testimony.

Chairman Campbell: Well, then since you brought it out yourself, I think it will have to stand. (Tr. 1300.)

The Witness (continuing): The first item under Chicago Junction proposed to change rate from 2½ cents to 3 cents, but the next line, from connecting lines to industries, there is no change. That rate is only a part of a through rate. (Tr. 1301.) These are in the nature of proportional rates, which apply in connection with originating at or loaded on team tracks or loaded on team track of another line and then moved to an industry, etc. They make a combination charge in that case, a combination of the two charges. These charges are all published. (Tr. 1302.) Team tracks

are not covered in the tariffs. They are not points on the general Lowrey basis. They are not open on the general basis. (Tr. 1303.) Illustrating this movement, where the 2-cent rate from a connecting line to an industry on the Chicago Junction would be applied: If a car is loaded on a team track on another railroad in the Chicago district, say the Pennsylvania, and destined to an industry on the Chicago Junction, there would be the charge of the road that originated the car on its team track. (Tr. 1303.) It would [fol. 887] move it to the Chicago Junction and the latter would move it from its connection with that road to the industry, and the Chicago Junction Railway's charge in that case is 2 cents per hundred, and it is not proposed to change it. (Tr. 1304.) Under the Lowrey basis there are no joint through rates from a team track on one line to a team track on another line. Some of the team tracks are open for general use and some are not, and some public team tracks are probably under the general basis, but the general rule is that team tracks are not covered by the Lowrey basis. Movements to and from them are on combination rates. A team track is owned by the railroad and built principally for its own use. It does not care to open it up for general use, and those that are open depend on the railroad whether they want to handle team track business or not. I cannot state what lines or carriers in the district have their team tracks open. There are a great many of them that are available for the handling of this particular class of traffic, but how many I could not say.

The Chicago River & Indiana and the Chicago Junction are separate corporations. There is some connection between the ownership, but what it is I do not know. (Tr. 1305.) They are both members of my bureau, but each has the same representative. (Tr. 1306.) As to the Chicago Junction, the item "From all Chicago Junction stations"—or "Between all Chicago Junction stations and all Chicago Junction stations," is a local charge of that railway of 2½ cents. The second item is from connecting lines to industries on the Chicago Junction, and the next is between connecting lines and team tracks. That charge is now 2 cents and it goes to 2½ cents. The word "between" should be read as to each of the three items opposite the Chicago Junction and opposite the Chicago River and In- [fol. 888] diana. I had no instructions to increase these

rates. (Tr. 1307.) But to answer Commissioner Campbell's inquiry, the Chicago switching district lines and Chicago Switching Committee in meeting convened authorized me to say that the carriers in the Chicago district desired to increase all the rates to the basis proposed. I cannot give the date of the meeting, offhand. (Tr. 1308.) The meeting of these committees was during the progress of the former hearing in this case, and I think around May 15, 1928, somewhere around the second day of that hearing. (Tr. 1309.)

Mr. Walter: Now, then, at that particular meeting was any representative of the Chicago Short Line present?

Mr. Davis: That is objected to.

Chairman Campbell: I think you have got a right to do this. I think you have got a right to inquire as to whether it was unanimous and if it was not unanimous, what carriers objected.

A. No, sir, they were not present at the meeting, but were consulted immediately after the meeting. I do not remember whether the Baltimore & Ohio Chicago Terminal was represented. I cannot remember all roads, but just happened to know that the Chicago Short Line was not present at the meeting. Let me explain. Under the rules of our organization, when we call a meeting of member lines, a line sends a representative to it, who is empowered to act. He comes to the meeting understanding that he is authorized by his company to speak for the railroad.

Chairman Campbell: Well, now, there are some things that I want to understand, following up what I asked before and the specification of these exceptions. I did not understand that there is any organization of yours which binds irrevocably the members of that organization. Is there?

The Witness: Absolutely not, Mr. Commissioner. That [fol. 889] is thoroughly and clearly defined. There is nothing that prohibits any line from taking any action whatever it sees fit to take. (Tr. 1311.) Our organization is for the purpose of establishing and maintaining uniformity in the rate adjustments, but there is nothing to prohibit any line from taking a different stand in a meeting or previous thereto or taking independent action, and it makes no difference who represented a particular carrier at the meeting, whether they were subordinates or executives; it would be

still free after such meeting, if it saw fit, to appear here and present and urge a different action than that which was taken at the committee meeting by their representatives. (Tr. 1312.)

Chairman Campbell: Now, how does that become material, Mr. Walter, as to who was there and what they did?

Mr. Walter: I am trying to find out, Mr. Chairman, because my information is that a number of these lines was not present.

Chairman Campbell: Well, it is not material, I think. Supposing there were a number who were not there and a number who were there, who afterwards took a different action. What difference does that make? We are interested first in knowing whether or not Mr. Galligan speaks for all of these lines in an authoritative manner, and he says he does not.

The Witness: As to the exceptions.

Chairman Campbell: Well, I know. But my statement was all-embracing. Then, as to whether or not there are lines here pressing these exceptions before us and are going to follow that up by proof as to why those exceptions are made.

Mr. Walter: I think the burden is on them, just to show why the rates should be increased.

Chairman Campbell: I grant you that. I am not arguing that at all. As you recall, yesterday I asked Mr. Galligan and Mr. Davis if they were simply going to present this [fol. 890] and say "We want to make these exceptions" without any supporting testimony. (Tr. 1313.) It seems to me if that were done we could either say, "There is no supporting testimony to these exceptions and therefore they should not be allowed," or could say, "Well, they come in here and present exceptions without explanation and we will use that as evidence showing that there should be no increases on any commodities." Those are risks the carriers themselves are taking.

Mr. Walter: For years these exceptions for particular movements under certain circumstances have borne a certain rate. There was no proposal in the tariff under suspension to increase those rates. It was only when the inquiry came from somebody as to the fact that there were exceptions that the question came into this record, and now they say they desire to wipe out those, but offer no evidence whatever as to why they should be wiped out or the rates

increased other than what Mr. Galligan has stated and Mr. Davis' statement yesterday, that for cost-figure reasons they should go up to the general basis; that is their sole justification (Tr. 1314), and we think the question before you is not whether there should be exceptions, but, Should the rates be increased to the basis they propose, whether they are exceptions or whether they are regular Lowrey basis rates, and that is the theory on which we are proceeding with our case. (Tr. 1315.)

Chairman Campbell: Yes, but is there not a burden upon the shippers when they come in here? We have a general investigation here involving all these rates, whether under suspension or not, that is all interstate rates as far as the Interstate Commerce Commission has jurisdiction. Carriers come in with a cost study which covers all commodities, which they will argue undoubtedly justifies the increase of all commodities. That being so, is not the shipper taking [fol. 891] a little risk if he sits back and says the carriers have not justified those increases and therefore we shall not make any showing as to why these commodities should not be excepted.

Mr. Walter: If you will allow us to present evidence as to each of these excepted movements we will be very glad to do so. It will take us months to do it, however, because as you see here, each one of them is a separate rate case in itself.

Chairman Campbell: Well, perhaps, but as I see it——

Mr. Walter (continuing): Just a moment further, if you will bear with me, Mr. Chairman. For example; you have only recently passed upon the slag movements and denied them the right to increase the movement above $8.10. Here they propose to put slag on the regular Lowrey basis. (Tr. 1315.)

Chairman Campbell: Yes, and you could very easily put a witness on to show that the value of the commodity is so-and-so and what the traffic will bear, and things of that sort, without taking months to do it.

Mr. Walter: Well, there are literally hundreds of cases here that we would have to deal with.

The Witness: There are not any hundreds of exceptions in the exhibit, Mr. Chairman.

Mr. Walter: I think by going through this you will find many cases that you do not even show, and that is another thing I want to ask about.

Chairman Campbell: Of course you have your cost study and you are going to claim that your cost study does not justify increases.

Mr. Walter: That is right.

Chairman Campbell: And you are going to claim that as to exceptions, there has been no justification by the [fol. 892] carriers which bears out your cost study, and all those things. Those are matters of argument. (Tr. 1316.)

Mr. Walter: But they are proposing, Mr. Chairman, to increase exceptions to the present basis where they have made no cost study at all, many of them where no cost study has been made, and no information at all has been furnished bearing upon the matter.

Chairman Campbell: Of course, I am not prepared to say how far the cost study has gone; and that is one of the things we will have to determine. (Tr. 1317.)

The Witness (continuing): On page 50 is the item for the Chicago & Illinois Western which says: "Tar, coal, in tank cars, etc., all stations on the Chicago & Illinois Western to all stations thereon, $9.00 per car; no change. Industries on the Chicago & Illinois Western to industries on Chicago Short Line, 2½ cents per hundred pounds; no change." (Tr. 1319.)

Chairman Campbell: Suppose there was no Lowrey basis and we were starting here to fix just and reasonable rates on all commodities. Would you not present some justification for a difference on coal tar, say, and iron and steel?

The Witness: I would not think we would have to do that; if we had a rate and there was no change in the rate that was in effect at the time. But if we proposed to increase that rate, then I would think the carriers should be expected to justify the increase. We do not have a whole raft of exceptions here that would destroy the Lowrey basis. We have very few exceptions to the general rule, considering the volume of traffic moving in the district; the traffic moving under the exceptions is very, very small.

Chairman Campbell: As long as you got these exceptions [fol. 893] do you not think that we ought to have a witness who will give us the reasons why they are making these

exceptions, and if you do not do that does that not leave the inference that Mr. Walter was apparently endeavoring to draw a little while ago? (Tr. 1320.)

The Witness: I think that is a question for Mr. Davis, the attorney, to answer, but if the Commission desires, undoubtedly we could get representatives of the different lines here that are making the exceptions. (Tr. 1320-1321.)

Chairman Campbell: I do not want to request it. I am simply asking if the carriers are satisfied to leave their case in that shape.

Mr. Davis: At the hearing in May we made the statement that it was our intention that everything under the Lowrey basis, every commodity, should be raised to the basis that we proposed, and if there were any exceptions the individual carriers would have to take them and give their reasons therefor. (Tr. 1322). We, representing all the carriers here, are for the uniform basis without exceptions, as far as the offering of any proof is concerned, but in all the committee hearings it has been said if any road has any exceptions to the basis proposed, that the hearing of the case is on or will be on, and that it could go in and explain why it thought its commodity "should be something less." (Tr. 1322.)

The Witness (continuing): As to new cars on their own wheels, moving from car shops to connecting lines, we propose some increases. At the previous hearing I stated there would be some exceptions on waste material and possibly on railway equipment; that the latter moved between railroads and was a matter entirely between them in the district and there might be some exceptions in connection with that particular commodity. Some of the carriers pro-[fol. 894] pose to increase their present rates relatively with the increase on other commodities; that is, relatively with the proposed increases on other commodities, 3, 3½ and 4 cents. (Tr. 1324.) There is no tariff charge for empty cars returned, that is another matter entirely. The railway equipment here means new equipment. (Tr. 1324.) The Indiana Harbor Belt and the Belt Railway, where they act as intermediate carriers, have a charge for the return of the empty car. In some instances they charge for the return of the empty car the same as the rate on new equipment in the district, that is, so far as box and refrigerator

cars are concerned. (Tr. 1325.) The Indiana Harbor Belt has a $2.70 charge for the return of an empty freight car. That is a matter between the railroads. It has nothing to do with the cost study, no connection whatever with the cost study. This is the return of an empty car from one railroad to another where it has been in road-haul movement. (Tr. 1325-1326.)

I do not know whether the charge for the movement of a new car is the same as a charge on an empty car returned by either the Belt Railway or the Indiana Harbor or other carriers here to the owning railroad. The movements are entirely separate and distinct. There is no connection between the movement of a new car, passenger coach, baggage car, or empty box car from a car building plant to a railroad and the empty car moving between railroads where there is an intermediate carrier which has to perform the service and is entitled to some charge for that. (Tr. 1326.) The charges of the different railroads for the return of empty cars are published in the tariff. On page 29 of the Exhibit, there are various rates proposed on ice, some of which are not to be changed and others which [fol. 895] are to be increased and there is considerable difference in the rates and the Rock Island and the Illinois Central are the only two lines named on that page subject to the cost study, (Tr. 1327.) but the Illinois Central includes the Chicago & Illinois Western. (Tr. 1328.) It might be possible that on those particular roads studied during the period the study was made, there was not a movement of one particular commodity but that would not change the general situation because we consider the roads on which the study was made as representative of the district as a whole and to pick out one commodity that did not happen to move during the period the cost study was made would not, I think, change the conditions at all, because we are working on averages. (Tr. 1329.) Beginning with page 52 of the exhibit and well on towards the end covers the Elgin, Joliet and Eastern and for page after page, no change is proposed and the reason they were included is that that road was one of the cost study roads and we were asked to make and file a statement showing exceptions to the general basis. These rates in most cases are higher than the general basis applicable in the Chicago district. That road does not subscribe to the Lowrey

agreement. We have included roads in the so called Chicago Industrial district, covering the Elgin, Joliet & Eastern. (Tr. 1330.) And we were asked to make a cost study and naturally we show here the same in ormation that we have shown in connection with the other railroads as to any exceptions to the general basis. The cost study on the Elgin, Joliet & Eastern was not entirely restricted to switching business. (Tr. 1331.) I do not know of any agreement or suggestion on the part of shippers or representatives of Commissions that the cost study on busi-
[fol. 896] ness outside of switching movements should be merged in the cost study of the lines in the switching district. We made a cost study of the Elgin, Joliet & Eastern but did not confine that study to the switching movements nor segregate the cost study and separate switching movements from the line haul movements. (Tr. 1332.)

There is no proposal to put the Elgin, Joliet & Eastern Railroad into the switching district or beyond where it is now. (Tr. 1333.)

On page 55, aqua ammonia, we show Gary and South Chicago on one hand and Gary and South Chicago on the other side. That is the way the item is published. It would be between Gary and South Chicago or between Gary and Gary and points there. It is a double barrel item between Gary and South Chicago and it is an inter-territorial movement as I understand it. (Tr. 1334.)

Chairman Campbell: I would like to understand about the Elgin, Joliet and Eastern movement. From questions asked across the table, it would seem to be the claim that the Elgin, Joliet & Eastern does not do any switching. Is that right?

Mr. Allen: That is the claim here.

Chairman Campbell: If the Elgin, Joliet & Eastern does not do any switching, taking it on iron and steel, for instance, their rates would be under investigation under Docket 17000 and now would be controlled by the Jones & Loughlin scale which is in effect. Is it moving at a rate lower than the Jones & Loughlin scale?

Mr. Walter: It certainly is.

Chairman Campbell: If so, why? (Tr. 1335.)

Mr. Walter: I understand Mr. Allen as attorney for the Elgin, Joliet & Eastern Railroad claims there is no switch-
[fol. 897] ing movement by the Elgin, Joliet & Eastern and

yet, there is a large volume of that road's traffic in the cost study so mingled that we cannot separate it.

Mr. Allen: Those rates are not published as switching rates; that is what I mean.

Chairman Campbell: It is apparently moving at a rate lower than the Jones & Loughlin scale. Now, why?

Mr. Allen: It moves right here in the district. It is the same or practically the same movement insofar as switching goes as a switching movement but it is not published that way. It moves right in the district.

Chairman Campbell: Then you are simply playing on words. It is a switching movement and that is the reason why you are not applying the Jones & Loughlin scale is it not?

Mr. Allen: Well, I would like to have somebody explain to us what switching movement is. I have never been able to find out. (Tr. 1336.)

Chairman Campbell: If you are moving traffic at a rate lower than the Jones & Loughlin scale which was provided for road haul movement, it must be because it is a switching movement. (Tr. 1336.)

Mr. Allen: It practically moves within the Chicago Switching District because the West end of Kirk yard is within the Chicago Switching District which is right next door to the steel plant at Gary.

Chairman Campbell: And if it is a switching movement and moves on switching rates it has a place on the cost study. If it is a road haul movement and moving on road haul rates it has no place in the cost study. (Tr. 1337.)

Mr. Allen: The Elgin, Joliet & Eastern does not subscribe to the Lowrey basis of rates and was built for a dif- [fol. 898] ferent purpose than handling a switching movement within the Chicago District but as far as the movement is concerned, it is comparable with and practically identical with the switching movement.

Chairman Campbell: As I stated before, it certainly has no business here or the rates, that is, have no business here if it is a road haul movement *if it is a road haul movement*. (Tr. 1337.)

The Witness (continuing): Kirk yard is just at the limits of the switching district and the West end of Kirk yard is within the boundary description of the district. (Tr. 1338.)

I cannot say whether on the exhibit relating to the Elgin,

Joliet & Eastern, we show points of origin and destination within the Chicago Switching District without checking each one. (Tr. 1338.) We have shown here for the Elgin, Joliet & Eastern, these rates as information; just what the rates are and what they propose to do because that line was one of the cost study roads. Most of the items show there is no change or no changes proposed in those rates. (Tr. 1339.) We have in the cost study movements from Gary to points in the district via the Elgin, Joliet & Eastern but I do not know whether you would call the movements on line haul rates. The shipments move on commodity rates published by the Elgin, Joliet & Eastern between Gary and Chicago in its individual tariff. (Tr. 1340.)

There was no requirement that they merge the showing as to the cost study from Gary to the district with those in the district; not in that particular way, but the Elgin, Joliet & Eastern was added as a cost study road and we made the study. There was no limitation or no exceptions as to what we should do with the Elgin, Joliet & Eastern but it was [fol. 899] simply added as a cost study railroad. (Tr. 1341.) I do not know whether the carriers elected to merge the Elgin, Joliet & Eastern cost with the other lines.

We were asked to study the Elgin, Joliet & Eastern which runs between Chicago and Gary in the Chicago Industrial District. We did not put in Bernice on the Pennsylvania because that is outside of the Chicago Switching District. Gary is also outside the switching district. (Tr. 1342.) Pages 52 to 64 I do not think show rates within the Chicago Switching District. I do not see any that would be applicable between points within the switching district but are applicable between two points on the Elgin, Joliet & Eastern railroad in the District. Page 62 covers points within the switching district and no change is proposed but those rates apply to railway equipment. (Tr. 1343.) Wherever there is a switching movement, it is on rates which we do not propose to change so far as the Elgin, Joliet & Eastern is concerned. (Tr. 1343.) But that road proposes to reduce some rates. It does not propose to increase any but there are some reductions. Tr. 1344.)

On page 64, the second item, between Hammond, Indiana Harbor, South Chicago, East Chicago, and Whiting, petroleum, 5½ cents, proposed 3 cents, 60,000 pounds. (Tr.

1346.) I do not know whether there is a movement of petroleum or its products from points in the "from" column to the "to" column. I do not know whether the refineries are at points shown in the "to" column, but there is sometimes a movement from points which do not have a refinery. I could not give another illustration without going through the exhibit carefully and running through these 30 or 40 pages of the exhibit. It should speak for itself. If there are any changes there they are set forth in the exhibit, of course. (Tr. 1347.) Page 64 shows movement from Buf- [fol. 900] fington, Gary, Hammond, etc., to Bridgeport, Illinois, but I do not know whether Bridgeport is a point on its line or not. It would seem to indicate so by the fact that it shows only the Elgin, Joliet & Eastern Railroad. It does not show a joint line. I do not know about the operations of these railroads around Chicago, whether they have trackage rights or not. They are not published in any tariff.

Mr. Walter: Is that correct, Mr. Allen?

Mr. Allen: That movement to Bridgeport would be over trackage rights which as a matter of fact I think are not being used right now, though I am not sure. But that is right, it is a trackage right proposition. (Tr. 1348.)

Ex. No. 85 was prepared at the request of Commissioner Campbell to show rates and what the carriers propose and where there were any exceptions to the general rule. We undertook to comply with that request and I included pages 52 to 90 inclusive of the exhibit for information. We simply endeavored to comply with the Commissioner's request. (Tr. 1349.)

Examiner Faul: But did you not go beyond the request of the Commission in including these line-haul movements?

The Witness: Which line-haul movements?

Examiner Faul: I understand that the Elgin, Joliet & Eastern is primarily a line-haul carrier.

The Witness: Well, it is a question, what is a line-haul carrier?

Examiner Faul: But after the Elgin, Joliet & Eastern was agreed to as one of the lines of cost study, the Commission, upon inquiry of the carriers as to whether or not the investigation would cover other than strictly switching roads, advised that it would cover strictly switching roads [fol. 901] as distinguished from the road-haul roads, and

are you not unnecessarily encumbering the record by including these items, or most of them, on pages 52 to 90?

The Witness: We did not so understand it, Mr. Examiner. We understood the Elgin, Joliet & Eastern was included as one of the cost study lines and that there were embraced in the investigation the rates between Chicago Heights and Gary, Indiana, on the one hand and points in the Chicago district on the other hand. As that was a part of the general case, we thought you wanted us to set forth in this exhibit the rates that are the present rates and what is proposed between those points. (Tr. 1350.) If it is the desire of the Commission to eliminate the Elgin, Joliet & Eastern roads in the respect stated, I do not think there will be any objection to it. In putting these rates in the exhibit it was not the purpose to have a comparison with the 3, 3½ and 4-cent rates on other lines, as proposed. We followed the line of rates in the districts and thought we were complying with the request of the Commission. If we went beyond that we can easily eliminate such rates as might be considered outside. (Tr. 1351.) With the exception of waste material, slag, cinders, refuse, quarry strippings, and stuff of that character, railway equipment either new or old, all commodities save those individually excepted, where the carriers appear and say they do not want them to go in, would be advances if the carriers are granted what they ask in this case, to the Lowrey basis. (Tr. 1352.) And the only carrier that has appeared up to this time is the Illinois Central with respect to tar, I think. Ex. 85 does not include all the exceptions, if any line comes in here and makes a statement that was not covered by the last part of mine; that if there were to be any exceptions the carriers would make such statements [fol. 902] for the record themselves. (Tr. 1353.) I do not know that we missed any exceptions. Naturally there might be some. Intraplant movements were not considered as a part of this work at all. They were excepted right at the start of the investigation. (Tr. 1354.) Slag moving in equipment of the shipper, with the present charge, an increase is not proposed. I said that was one of the exceptions made on waste material. It is waste, considered as waste, and so are cinders, refuse of all kinds. If there is a movement of coal and coke at less than the Lowrey basis not shown in Ex. 85 we propose to increase

it to the Lowrey basis. If not shown, it has been missed. We propose to increase rates on movement interplant from one building or location of a single corporation to another location, but going off the property of the industry unless the line which makes the movement makes an exception here. If it is not stated for this record, then they should come in and make an exception. (Tr. 1355.) The Elgin, Joliet & Eastern has not to my knowledge ever made application to become a member of the Chicago Switching Committee or a party to the general arrangement, and certainly not since I have been chairman of the Chicago Switching Committee. (Tr. 1355.)

Cross-examination.

By Mr. Livinghouse:

There are some points on the Elgin, Joliet & Eastern within the switching district where no change is suggested, but a very few, however. That road is not a member of the Chicago Switching Committee. It operates considerable trackage in the Chicago switching district in and around South Chicago, Hammond and through that section, and has generally observed the same rates as are applied in the district. It was necessary to enable them to handle any business. Regarding the proposed basis of 3, 3½ and 4 cents which the carriers proposed after their [fol. 903] conferences, it was due to the statement repeatedly made by the Chicago shippers that they wanted an all-commodity basis; they wanted uniformity and whatever the rates were, they wanted a uniform basis. If that is not satisfactory to the Chicago shippers, it may put a different face on the whole thing. (Tr. 1356.) The Elgin, Joliet & Eastern subscribed to that all-commodity basis only to the extent of the few rates they might have applicable within the Chicago switching district, or territory described as such.

Page 63 of the exhibit, near the top, shows a rate of 5 cents from Buffington, South Chicago, both points within the Chicago switching district, and no change in rates shown. Assuming that the Indiana Commission should agree to the 3, 3½ and 4 cent basis and make an order prescribing those rates, a carrier would probably have to comply with that order in that respect. (Tr. 1357.) And

that would be true of any other points in the exhibit. As to iron and steel articles between Gary, South Chicago, Indiana Harbor and Hammond, the present rate is 60 cents per gross ton, 56,000-pound minimum, and it is changed to 60 cents per net ton, minimum 60,000 pounds. They have raised the minimum weight of the car from 25 gross tons to 30 net tons, and the rate from 60 cents per gross ton to 60 cents per net ton a single-line haul. (Tr. 1358.)

Chairman Campbell: Mr. Galligan, your cost studies have been made upon the basis of 3, 3½ and 4 cents, have they?

The Witness: Yes, sir. Well, of course the cost study has been made on the basis of determining the actual cost of handling, but we had in mind justifying rates of 3, 3½ and 4 cents.

Chairman Campbell: And it is your contention, and will [fol. 904] be, that the cost study does justify those rates without exception? (Tr. 1359.)

The Witness: Yes. I would not say it justifies the figures that we would have asked for, that a majority of the roads have asked for.

Chairman Campbell: Supposing that these exceptions are allowed. Would it throw your cost study out of joint?

The Witness: Well, it would—that is, not exactly; I would not say it would throw it out of joint, but if exception is allowed and we found average cost of handling that commodity was the same as another or same commodity for a similar movement, there would be a different rate or you might say a preferential rate of that particular movement. (Tr. 1360.)

Chairman Campbell: Mr. Davis is it your purpose to put on Mr. Sauer or any of your cost experts for the purpose of making a survey of what the cost study justifies or are you going to leave that entirely to argument?

Mr. Davis: Up to this time I had not decided to put Mr. Sauer again on the witness stand but from the way the evidence is developing now, it perhaps might be well to put Mr. Sauer on at the close of our case to make a general summary of the showing made by the cost study. (Tr. 1360.)

Chairman Campbell: Will he be prepared to show what the difference in the—well perhaps I had better not ask that question but I was wondering whether or not these exceptions are going to be so numerous that they might

in any way upset the calculations as to what the level of the rates ought to be.

The Witness: These exceptions are not as numerous as might seem to be the case.

Mr. Davis: They keep referring to these exceptions as being numerous. As I understand this case there are only [fol. 905] 2 or 3 exceptions to the general basis proposed here. (Tr. 1361.)

Chairman Campbell: There seem to be a good many exceptions in this exhibit, Mr. Davis. My understanding was about the same as yours until this exhibit came in and questions arose over them. I still understand the position to be that the committee represented by Mr. Galligan is presenting this matter without exception, except for the 2 or 3 items that were first mentioned, one being waste material and another being railway equipment; that is being presented by the committee without exception, except those stated by Mr. Galligan; but he has here presented in his exhibit exceptions which individual carriers are going to claim. Now is that right?

Mr. Connell: Mr. Commissioner, I think Mr. Galligan's statement was somewhat misleading. I understood him to say that all the carriers propose to make an exception of refuse.

The Witness: That is one of the exceptions stated in the record to start with.

Redirect examination.

By Mr. Connell:

Q On page 11 of Exhibit 85, you show cinders and refuse rates on the Santa Fe which it proposes to cancel, (Tr. 1362) which would leave in effect the established switching rates. The cancellation is because there is no movement and that would not leave an exception on the Santa Fe and the same explanation as to the Baltimore & Ohio Chicago Terminal as to refuse, waste material, between industries and industries. It cancels that rate because there is no movement or one that does not amount to anything. That will go to the general basis. On the Indiana Harbor Belt, Exhibit, Page 13, they propose to cancel the $12.00 per car charge on ashes and cinders and that would go to the all commodity basis. Generally the committee does not sug-

gest any exceptions except the very few just mentioned, to [fol. 906] the Lowrey basis; (Tr. 1362) but individual carriers as shown by the exhibit or several of them perhaps will present exceptions which they are proposing. (Tr. 1363.) And most of those or a great many of them are cinders or refuse material which we have listed and also as to railway equipment we show what they propose to do. Some propose to continue those rates; some to advance those rates relatively but they are still exceptions to the general basis and covered by this general explanation. I could not say offhand without checking the exhibit what roads, other than the Illinois Central and the Elgin, Joliet and Eastern, except refuse and cinders from the Lowrey basis. I could not answer definitely right now as to there being no others. The statement is here for all those roads and they are presented under the heading of cinders, refuse material, ashes, manufacturing plant refuse, foundry refuse, etc. There is quite a number of items (Tr. 1364) and the exhibit shows what they propose to do with them. The actual facts regarding cancellation of these rates are to be found both in Exhibit 85 and in my general statement. In order to determine the roads proposing exceptions on ashes, refuse and cinders, we would have to look at Exhibit 85 and that is true of many other exceptions.

Mr. Brown: If I may say just a word, Mr. Commissioner: On page 11 of the exhibit, under heading "The Belt Railway", is shown a rate of $8.10 on cinders with no change indicated. That is not a correct statement of the position of our road. Some error must have been made in checking this. We propose to cancel that item and substitute the Lowrey basis. (Tr. 1365.)

Mr. Davis: In view of the cross examination of Mr. Galligan, on certain phases of this by Mr. Walter, we would like to have him make a statement on behalf of those whom [fol. 907] he represents as to whether or not they want a uniform basis in Chicago or whether they want separate rates on separate commodities.

Mr. Walter: We contend for a uniform basis but we say that these exceptions of the individual carriers were made to meet a situation which exists with respect to each individual movement and that you must justify any increase in those individual rates. (Tr. 1366.)

Recross-examination.

By Mr. Walter:

Our committee does not publish these exceptions. They are published by the individual lines in their individual issues, (Tr. 1366) but ordinarily their reasons for publishing these exceptions would be discussed in the Chicago Switching Committee regardless of the fact that they may cover a single line haul. The single line rate naturally would not be determined by the switching committee, although it would be submitted to the committee for discussion as to whether there was objection to it and if objected to that would be considered but if the Pennsylvania desires to put in a single line rate it may do so under the rules of the Committee over the objection of any other line. (Tr. 1367-1368.) The committee considers individual publications for the purpose of uniformity in the rate adjustment. (Tr. 1368.) The switching committee takes up matters that are subject to discussion and if there is no objection to the establishment of rates they are published, but the idea is to preserve uniformity but if there is objection, and a line desires to go ahead, it may publish the rate nevertheless, but it follows the procedure of giving notice so that other lines may be advised. (Tr. 1369.) We have a joint conference committee of shippers and carriers—a shippers section and a carriers section. If the switching committee [fol. 908] decides to make a change in rate or increase, Mr. Brown of the Chicago Board of Trade, who is chairman of the shippers section of the joint conference committee is advised of that proposed action. (Tr. 1369.) An individual carrier cannot publish an exception to the Lowrey basis for a particular movement without submitting it to our committee. Of course, any road can do anything, but it should observe the understanding by proceeding under the rules and it is a part of the understanding with the shippers so that they will have notice of the action that they may appeal to the Joint Conference Committee. (Tr. 1370.) In proposing cancellation of the rate on page 11 covering cinders and refuse material from industries on the Santa Fe to dumping points on the Santa Fe, the representative of that road said he understood there was no movement or any of particular significance at the time the proposal to cancel was made and to let the general basis apply.

He proposed to cancel the rates but did not definitely say that it made no difference to the Santa Fe, or that it had no movement. The Santa Fe was told what was wanted in the exhibit and this was checked in by the Santa Fe and one of the reasons given for cancelling the rate and advance to the general basis was because the movement was of very little consequence. (Tr. 1371.) As to the $10.00 and $15.00 rates to be cancelled by the Baltimore & Ohio Chicago Terminal, I did not say those cancellations were because there was no movement. As to the first one, I know that was discussed a little but I did not have that information from the Baltimore & Ohio Chicago Terminal. (Tr. 1372.)

I could not say if the basis of 3¢, 3½¢ and 4¢ is established whether or not the rates from Buffington, Indiana should come down to the level of the basis proposed for the [fol. 909] switching district. (Tr. 1373.) The Elgin, Joliet & Eastern is not a member of the Chicago Switching Committee. With reference to the section 4 violations referred to by Mr. Pierce, there are a number of low commodity rates in effect from points outside of Chicago to Chicago. From time to time, we have sought to advance those rates to a remunerative basis and in some instances shippers have not objected and where they did, we filed tariffs that have been suspended and we did not get those advances. We have provided in the switching tariffs for a minimum which will take care of the proposed increase in the Chicago district and increase the rates sufficiently to clear the rates we propose in the district with a minimum charge per car. (Tr. 1374.) As to readjusting these rates, we are analyzing that question or we are going into that question now. A number of the roads are analyzing their commodity rates from surrounding territory into Chicago in an effort to get them to a remunerative basis. (Tr. 1374.) (1375.) Having in mind the competitive situation in many industries and where a general adjustment is sought with some rates to be raised and others lowered before a rate is made which vitally affects an industry located on a given line, a careful investigation of that particular industry and the effect of the rate change upon it should be made before an increase is made. (Tr. 1376.) That is done. It will be done by any wise traffic man. A number of carriers, but how many, I do not know, had made such an investigation on May 15th, 1928 when we published these proposed increases in the

Chicago rates, (Tr. 1376) but it was prior to this time that Illinois carriers started an investigation and an analysis of their low commodity rates from outside districts into Chicago; and that was independent of anything under the 4th section or of an increase to 4¢ and having that information at the time the switching case came up they were able to [fol. 910] merge the two ideas and reached the conclusion that they should have the minimum charge until they could get an increase on the commodity rate from the outside, in. (Tr. 1377.)

T. E. Bond, called in behalf of respondents, was duly sworn and testified as follows:

Direct examination.

By Mr. Allen:

Have been with the Elgin, Joliet & Eastern Railway Company for the past twenty years, and am its traffic manager and have been since 1923. This railway operates as a belt line around Chicago, starting at Waukegan and running a distance of 30 to 40 miles outside of Chicago to the eastern end of its line, which is Porter. It has another line reaching South Chicago, Hammond and other points in the so-called Chicago district. (Tr. 1378.) The line was located from an operating standpoint to take traffic out of Chicago and keep it out of the congested district, both through and local traffic. We have never subscribed to the Lowrey basis of rates because we believe that basis is too low. We have a large amount of tonnage moving to the district and have never felt it necessary to meet the low rates as we considered them, that were effective under the Lowrey agreement. We have always treated our line from Gary to South Chicago, Hammond, Buffington, Whiting and Indiana Harbor on the same basis. In other words, we had Chicago district points that we treated on a uniform basis and applied the same rate from and to all those points to other points in the Chicago district. (Tr. 1379.) In so far as the adjustment with respect to line haul rates is concerned, traffic men claim that the Lowrey basis of rates in the Chicago district is more or less reciprocal. That would not be true with respect to the intra-district

[fol. 911] movement. (Tr. 1380.) No advantage would result to the Elgin, Joliet & Eastern Railway on line-haul movement in going on the Lowrey basis. It would be a disadvantage because it would require the movement of traffic through junctions in the Chicago district instead of taking it out to points on the outside, which is what the road was built to do. Generally speaking, we have always carried from Gary into the Chicago district on higher rates than the Lowrey basis. We have a few of our rates under suspension now before the Commission. (Tr. 1380.) The majority of them are published between local points on the Elgin, Joliet & Eastern, such as between Gary and South Chicago, or between points in Gary, or between points in South Chicago where the rates are 3 cents per hundred pounds or 60 cents per gross ton. We proposed increases for the one-line haul basis proposed by carriers operating under the Lowrey tariff, that is 3 cents for one-line haul, being 60 cents per net ton instead of gross ton, which makes an increase. Practically we are now on the same basis that we have been for some time, except where rates that we had were also for one reason or another other than the rates proposed by the carriers under this new adjustment in the district. In that event we raised those rates to make our rates come up to the proposed rates of the other carriers. For the most part our rates shown in Ex. No. 85 have been designated here as exceptions, and are not exceptions to our general basis of rates. (Tr. 1381.) We merely proposed to continue the rates we now have in effect. Cement, of course, is practically the only commodity produced at Buffington. Its rate from there to the district is 5 cents, whereas the going rate on the line is 3 cents. The cement rate was brought about by the increase under General Order 28 and has never been changed because cement rates generally in this territory have been [fol. 912] adjusted with relation one to the other, and to change the cement rate from Buffington to points in the Chicago district would necessarily bring about a great demand for reduction in rates from points outside the district. That refers to any point. (Tr. 1382.) But LaSalle, Oglesby and Dixon are in keen competition with the Buffington plants into the district. The 5-cent rate is almost

useless, as 75 per cent of the production of the Universal Portland Cement Company at Buffington moves to the Chicago district by truck, and a rate of 3 cents, 2 cents or 1 cent probably would not move that cement today, so there is no particular reason for reducing it, and I would not simply disturb the adjustment, which is working out very well as it is.

So far as the Chicago district stations are concerned, we could not separate Gary and South Chicago, for example. We have always handled them on the same basis, and as to our Kirk yard, which is our breakup yard for everything in the Calumet district, a shipment from Hammond, which is without question in the Chicago district, would move through Kirk yard going to South Chicago, and Kirk yard is Gary. Gary is intermediate between Hammond and South Chicago, and the operation of this railroad is the same at Gary and South Chicago and all of those points. (Tr. 1383.) The stations on the line in the Chicago district are South Chicago, Indiana Harbor and Whiting, Hammond, East Chicago, and Buffington. These are all I recall offhand. The Elgin, Joliet & Eastern Railroad has no particular position to take in this case. The Commission asked that our line be included in the cost study. We made it the same as any other railroad and have put in that cost study movement in the Chicago district, as we understand the Chicago district. A great deal of talk has been had on the Chicago switching district. The [fol. 913], official name of this district is Chicago District, and not Chicago Switching District, and there is nothing in the tariffs that cover the joint hauls that says anything about switching district except that the name "Chicago Switching Committee" is on the title page that refers to the Chicago district. (Tr. 1384.)

Chairman Campbell: I think one statement ought to be corrected as to the Commission asking the inclusion of the Elgin, Joliet & Eastern in the cost study. The Commission did not ask that any lines be included.

The Witness: Well, I was not at the conference. We were not soliciting an invitation to get into the case, but we did understand that the Commission wanted figures for the Elgin, Joliet & Eastern, probably because of a very heavy carrier business in this particular district. (Tr. 1385.)

Chairman Campbell: I can see, however, where we might have thought it was desirable because of the iron and steel phase.

The Witness: Yes.

Chairman Campbell: And it may be a distinction without a difference, but I want it understood, however, that we did not order any of this testimony. (Tr. 1385.)

The Witness: As I said before, Mr. Commissioner, I was not at any of those conferences, but I simply understood that we were expected to participate in the cost study. (Tr. 1386.)

I am not an operating man, but so far as I know, on a movement from Gary to South Chicago on our line, in so far as circumstances and conditions of operation are concerned, is comparable to any similar movement within the Chicago district on any other railroad, but I do not know anything about the operations of the other people. But I do know that the movement from Gary to South Chicago on our line is the same kind of movement that it has from [fol. 914] Buffington or Indiana Harbor or South Chicago, and assume it is the same as any other line. (Tr. 1386.) I have been over the Chicago district and watched the movements made and have been through breakup and classification yards. I have done all that and say, as far as I know, that operating conditions are the same; but I am not an operating man. (Tr. 1387.) As to the suggestion of Commissioner Campbell that our line should have published its rates on the basis specified by the Commission on iron and steel in Docket 17,000, I do not see how we could do that and maintain them in competition with rates in the Chicago District on other lines. Our rates have not been made on the Lowrey basis but have been made (Tr. 1387) with relation to rates in the district published by other lines. They have been somewhat higher, but not as much higher as they would be under 17,000. We have a manufacturer of steel on the line that competes with steel manufacturers located on other lines within the Chicago district, and our rates for a movement into and within the district must be somewhat in relation to the rates of the other carriers. Mr. Walter seemed rather interested in the Elgin, Joliet & Eastern's exceptions, but as I looked them over they do not amount to anything at all. Without criticising anybody making this statement, it is somewhat

a mistake to call them exceptions, as many of them are not. As a matter of fact they simply set up what the present rate is, the proposed rate, and "No change." That makes a big bulky volume which might have been covered in a very few pages. (Tr. 1388.) While our line has been used as a part of the cost study it is not a subscriber to the Lowrey agreement, never has been and does not want to be, and hopes it will not be. We desire to carry our rates on the basis that they are today, and if we can get the increases that we are proposing we certainly want to get [fol. 915] them. It is a fair statement, leaving out reference to the Lowrey basis, that it is our desire and purpose to make our rates independent of what other rates may be established by other lines in the switching district of Chicago, having due regard to the competitive situation we are forced to meet, and with due regard to whether or not the rates are reasonable for the movements. (Tr. 1389.)

Cross-examination.

By Mr. Livinghouse:

We are not asking generally the 3, 3½ and 4 cent basis. What we ask is this: We have today for one-line hauls a 3-cent rate, generally speaking, which is sometimes applied as 60 cents per gross ton. We asked an increase to 3 cents per hundred pounds to make it uniform, being what the other lines are asking for a single-line haul. Our joint-line haul rate is 5 cents per hundred pounds, speaking generally, and we are not asking for any increase or suggesting any reduction in that basis. As to certain switching lines like Chicago Short Line, Chicago, West Pullman & Southern, Chicago & Calumet River, we have applied our basis of 3 cents to deliveries on those lines. We ask to advance those rates to 3½ cents, which is the two-line haul rate proposed in the Chicago district. The Elgin, Joliet & Eastern was never in the Lowrey agreement, and in stating that we could not put in the line-haul rates on iron and steel because too great, (Tr. 1390) it should be observed there is a vast difference between a 3-cent rate and a 2½ cent rate, Mr. Examiner, and a rate which would go up to probably 8 or 10 cents, as compared with such 2½ or 3 cent rate.

Examination by Chairman Campbell:

I think the Jones & Laughlin scale starts at 6 cents for [fol. 916] the first 10 miles, and if we made a lower rate it

was not because we believed the 6-cent rate was too high. We simply did not change our rate at all, Mr. Chairman. We never considered the Jones & Laughlin changes would apply to a terminal district. (Tr. 1391.) The word "switching" is rather hard for me to overcome, but leaving it out, we considered our line a terminal railroad and not affected by the line-haul rates laid down in the Jones & Laughlin scale.

Examination by Examiner Faul:

Going back to our cement rates, Buffington to South Chicago, these points are about 12 miles apart, and that distance is less than the average movement within the Chicago district, although I do not know offhand exactly what the average distance is. If the Commission should prescribe the general basis of 3, 3½ and 4 cents or anything less than 5, there are no transportation conditions present in a movement between Buffington and South Chicago which should give us a higher basis than the Lowrey basis. (Tr. 1392.) We do not want to disturb the general adjustment of cement rates in this territory that are working out pretty well now, and that would not mean another pound of business for our line, but so far as transportation reasons go, there are none justifying a higher rate from Buffington than the basis proposed, if the Commission orders it. (Tr. 1393.)

Examination by Mr. Davis:

There are cement plants at LaSalle and Dixon, Illinois, Hannibal, Missouri, and Mitchell, Indiana. The Commission did not prescribe in Docket 8182 the cement rate from Buffington. The adjustment provided under that docket excepted rates in terminal or industrial districts, or some-
[fol. 917] thing like that, but the Buffington rate simply grew up, and the gradual increase or gradual changes in the rates has brought it to 5 cents, and we are not having any trouble with cement rates in Illinois and therefore I would not like to have a Buffington reduction started. (Tr. 1394.) In trying to draw the line between terminal and switching terminal and line haul, I think we have got to consider this terminal district, whatever else you do, including the Elgin, Joliet & Eastern. (Tr. 1395.)

Cross-examination.

By Mr. Walter:

If our road became a member of the switching committee and a party to the Lowrey Tariff, it would not have the effect of changing points of interchange so far as this particular business is concerned, so far as traffic to and from the Chicago Switching District is concerned. Gary is our most important point and probably produces more tonnage than any other point in the district and I think our company in most cases owns the industrial tracks at Gary. (Tr. 1396.) We own tracks in other industries besides those at Gary. I do not know whether it is an exception for a railroad to puf in industrial tracks. I could not tell you the important industries where we furnish industry tracks free of charge. Besides those furnished at Gary, we furnish tracks at South Chicago to the Illinois Steel Co. I cannot say offhand, but I think we furnish industry tracks aside from those that are affiliated with the ownership of the Elgin, Joliet & Eastern.

Mr. Allen: I can say that we do and it is the general scheme to own tracks in all industries, Mr. Walter, on the Elgin, Joliet & Eastern. (Tr. 1397.)

The Witness (continuing): I had not thought of that fact as a reason why our rates should be higher than the general line of rates. I suppose these tracks are expensive, but I do not know the arrangement for maintaining them. [fol. 918] We do not own tracks in the Standard Oil Company and I suppose, other large industries served by our line, at least a good many of them, own their tracks. (Tr. 1398.) The Cement Co., and the Steel Company handle their business entirely separate from the Elgin, Joliet & Eastern Co., and the rates they pay are of concern to each of them. I said a reduction in the Buffington rate might create a demand for a reduction in the rates from Dixon and La Salle. I do not think the reduction in the Buffington rate, or the increase in the ability of the Illinois Cement Companies to get into the Chicago District, if the Buffington rate was reduced, would have no effect on the Buffington plant or the Elgin, Joliet & Eastern Railroad because the freight rate has absolutely nothing to do with it because it does not move by freight from Buffington. (Tr. 1399.)

Even though 75% of cement moves from Buffington into Chicago by truck at the present time, I would not think an increase to 3¢, 3½¢ and 4¢ on articles generally in the Chicago District would put more trucks on the streets. Cement is a commodity that lends itself very readily to trucking so do other commodities and they move by truck today. (Tr. 1400.) As we do not handle packing house products, I do not know whether the packers would truck their meat all over Chicago instead of moving it in refrigerator cars if the increased rates go into effect. (Tr. 1400-1401.) I do not think meat would be harder to handle by truck than package freight or iron or steel articles because they cannot move iron and steel by truck. Generally speaking, the position of the Elgin, Joliet & Eastern in this case is one of absolute indifference. I do not know that some of the interests on the Elgin, Joliet & Eastern that are competing with other interests in Chicago whose rates are proposed to be increased would be greatly benefitted by an in-
[fol. 919] crease in the Chicago rates, and I would not think if their competitors' rates were increased in the district that it would make it easier for them we serve to get there.

Redirect examination.

By Mr. Allen:

Any excess earnings of the Elgin, Joliet & Eastern would not go to the steel corporation. The law covers that and at one time the company did pay on excess earnings under the recapture law. That did not go to the steel corporation. (Tr. 1402-1403.)

J. A. Behrle, called in behalf of respondents, was sworn and testified as follows:

Direct examination.

By Mr. Gladson:

Am freight traffic manager of the Chicago & Alton Railroad Company; have been connected with this line for the last 25 years; gave testimony in Docket 19557 earlier in the year in which the Joliet-Chicago lines desired to establish temporary rate on crushed stone, sand and gravel in the

Joliet district to Chicago. The Commission declined to permit this rate to become effective, stating it was a matter to be considered with the revision of the rates in the Chicago district. (Tr. 1404.) The Chicago and Alton is interested in this proceeding because a number of gravel pits and quarries are located on its line in the Joliet district. These are at Lemont, Joliet and Millsdale, Illinois. My testimony will have to do with crushed stone, sand and gravel only and from the standpoint of relationship and not with the measure of the rates. (Tr. 1405.) Prior to the Lowrey arrangement of August 1st, Joliet pits and quarries could compete quite freely in the Chicago market because Chicago-Joliet lines carried net rates from Joliet [fol. 920] to Chicago comparable with those applicable from quarries in the Chicago Switching District. (Tr. 1405.) The rates of the originating lines had added to them the switching rates of the delivering lines. The Lowrey tariff proposed a minimum rate of 50¢ from Joliet to Chicago and 30¢ per ton single and 2 line rate within the district creating a 20¢ spread between Joliet and inner district producers. The Lowrey Tariff was protested by Joliet producers but allowed to become effective without an exception on crushed stone, sand and gravel and this situation caused revision of rates in the Chicago District and from Joliet to Chicago. We feel now and did feel then that if crushed stone, sand and gravel is to move from Joliet to Chicago, a readjustment of those rates, Joliet to Chicago, would have to encompass a revision of the rates in the district. Subsequent to the first Lowrey tariff, the Joliet-Chicago rates became 65¢ for single line and 85¢ for joint line hauls, contrasted with a 50¢ rate in the district. (Tr. 1406.) The Chicago & Alton as a delivering line has in effect with the originating lines in the Chicago District, a 50¢ rate, whereas stone, sand and gravel, originating on its rails at Joliet and delivered on its own rails at Chicago, pays 65¢, which difference has entirely destroyed normal movement of these building materials from Joliet. The two line rate in the district is evenly divided, the delivering line assuming per diem expense, but our road as an originating line on movement from Joliet to Chicago would pay the delivering line 30¢ and pay a reclaim to the delivering line. (Tr. 1407.) The Chicago, & Illinois Western, on the Lowrey Tariff, enjoys the two line basis of 50¢ to deliveries involv-

ing 3 lines which to a delivery on our road would divide 33¢ to the Chicago & Illinois Western, out of which intermediate charge is assumed and 17¢ to the delivering line. [fol. 921] (Tr. 1407.) The movement of this material from Joliet has become less as the operation of the revision continued, and is the situation today. Only in unusual instances can Joliet shippers move their material from the Chicago & Alton rails, and therefore we ask the Commission for a readjustment of rates within the district, which will reestablish the Joliet district in the Chicago market. (Tr. 1408.)

Cross-examination.

By Mr. McCornack:

On a two-line haul our delivery service within the district, whether on crushed stone or gravel, is substantially the same. (Tr. 1409.) In the district where a single line is 40 cents, the two-line haul would be 50 cents, and where the single-line haul is 50 cents that applies to two-line hauls also. (Tr. 1409.) Two-line hauls of gravel from the Joliet district would pay 85 cents to the same destination, or 20 cents over the single-line rate of 65 cents. (Tr. 1409.) If the proposed rates are established, gravel or crushed stone within the district would pay, as compared with Joliet shippers, on a relation of 70 cents to 85 cents. At the time the 65-cent rate from Joliet was proposed, it was also proposed to change the crushed stone rate within the district to 60 cents for a single-line haul. (Tr. 1410.) It is my judgment arbitraries for a two-line haul on gravel and crushed stone should be the same within the district. (Tr. 1411.)

G. F. VIVIAN, recalled as a witness in behalf of respondents, testified as follows:

Direct examination.

By Mr. Davis:

I am the same Vivian who previously testified in this [fol. 922] case. I have made studies of Exs. 7, 8 and 11, as requested. The result of the study, coupled with a further statement I desire to make, are embodied in four ex-

hibits (Tr. 1412), referred to as Nos. 7-A, 8-A, 11-A and 11-B. (Said documents were offered in evidence, marked "Exs. Nos. 7-A—8-A—11-A—and 11-B, respectively, Witness Vivian.") (Tr. 1414.) In preparing these statements we reverted to the individual cars for Exs. 7-A and 8-A, setting up the various costs for each car; for Exs. 11-A and 11-B it was necessary to revert to the bills to show present revenue, proposed revenue per car, per car miles, and ton miles as to each car. (Tr. 1414.)

Exs. 7, 8 and 11 were generally criticised because they did not show sufficient detail of information interested parties wanted. (Tr. 1414.) Compliance with the various requests to restate these three exhibits has resulted in Exs. 7-A, 8-A, 11-A and 11-B, respectively.

Pages 12 of Ex. 7-A, beginning with Number of Cars, column 3, 20, for commodity 49, to and including the total reading 421, should be stricken out in their entirety, having been duplicated from page 9. The only line belonging on page 12 is the one under Commodity 30. The rest of the page should be stricken out.

On page 20, column 4, is carried a decimal point as in Commodity No. 1, 86935.94, which should read 8,693,594. (Tr. 1415.) That correction applies to the entire column.

This exhibit shows interstate proportion of cost for one-line haul is 63.4 per cent; Illinois proportion, 15.5 per cent. This percentage does not appear on the face of the exhibit, but it can be computed from the exhibit. All figures I give from now on can be computed from these exhibits without reference to any work sheet. Those are percentages of the total cost of one-line hauls, 63.4 per cent interstate, 15.5 per [fol. 923] cent Illinois intrastate, and 21.1 Indiana intrastate, covering a study of 7573 interstate, 1951 Illinois intrastate and 2426 Indiana intrastate cars (Tr. 1416), totaling 11,950 one-line hauls; two-line hauls, interstate 5472 cars, Illinois intrastate 5853 cars, Indiana intrastate 158 cars, total 11,483 cars. The percentages of total cost are: Interstate 51.1 per cent, Illinois intrastate 47.3 per cent, and Indiana intrastate 1.6 per cent. For three-line hauls 803 interstate cars, 1930 Illinois intrastate cars, none for Indiana intrastate, making a total of 2733. Interstate percentage of total cost is 31.4 per cent, Illinois intrastate 68.6 per cent. Each of these percentages applies to total cost. (Tr. 1417.)

Ex. 11-A covers 11,950 one-line car studies, representing 60.5 per cent of total; 7800 cars were not studied, representing 39.5 of the total. Combining these two, 41.4 per cent were interstate, 13 per cent Indiana intrastate, and 45.6 per cent Illinois intrastate. Those are percentages of cars. Percentages of tons, present and proposed revenue, are approximately the same as these percentages given. Proposed revenue on the cars studied increases present revenue 16 per cent. The cars not studied, proposed revenues increase present revenues 30 per cent; total increase being 19 per cent for one-line hauls. A further separation of the study sheets shows that of the 41 per cent interstate business, 38 per cent were study cars and 3 per cent were others. (Tr. 1418.) Indiana intrastrate 13% of total, 12% for study cars; Illinois intrastate, 45.6%, 9% only were study cars, the others were not study cars. (Tr. 1418.) On 2 line hauls, interstate represents 41.9%, Indiana intrastate 1%, Illinois intrastate 57%. The interstate study cars were 30.9%, Indiana intrastate, 1%; the [fol. 924] latter being practically all study cars; while of the 57% of Illinois intrastate movement 33% of the total were study intrastate Illinois cars as against 24% other Illinois intrastate cars. The weight and present and proposed revenues again have approximately the same percentages. The 2 line hauls studied were 65% of the total movement and proposed 2 line revenues show increase over present of 39%. (Tr. 1419.) In 3 line hauls, 52% of the cars were studied. Interstate total of 30%, no movement in Indiana and 70% Illinois intrastate. In the 30% interstate, half were study cars, the balance not. 66% of Illinois intrastate were study cars, proposed revenues for 3 line hauls increase present 22%. (Tr. 1419.) Average ton haul one line is 12.85 per study road cars, while total is 1062; 43.1 tons average loading for study road cars against 41.1 tons for total. Average ton haul 2 lines, 24½ against 22.6 average total. Average loading per car, 42.1 per study road cars and same for total; and 26½ average ton haul 3 lines against 25.8 for total. Average loading study cars 42.7 tons as against 42.8 tons for the total. Separating cars according to movements 18.6% 1 line hauls were on Lowrey basis; 14% being cost study cars; 36.7% moved one line on rates over Lowrey basis, 35.6% being study road cars. Shipments moving one line under present

Lowrey basis or under basis proposed which will move up to the Lowrey basis were 16.4% of total, 6.4% being study cars. Of those lower than the Lowrey basis that will remain so 28%, 4% being study cars. (Tr. 1420.) 2 line movements 73½% of total moved on Lowrey basis, 42.9% being study cars. Movements above Lowrey basis 12.5%, 10.6% being study cars. Shipments now taking lower than Lowrey basis that will be increased to it, 12% of total movement, 9.6% being study cars, leaving movement lower than Lowrey basis 2% of total, 1.7% being study cars. [fol. 925] 3 line Lowrey basis movements represent 38.9% of total, 18.8% being study cars. Over Lowrey 30.7%, 17.9% being study cars. Under Lowrey basis to be increased thereto, 7.3%, 5.5% being study cars, leaving those lower than Lowrey that remain so, 23.1%, 9.85% being study cars. Each percentage given is based on total for the particular haul. (Tr. 1421.)

Commodity 49, pig iron and blooms, was inadvertently omitted in this exhibit, though included in the total. I wish to put therein, beginning with column 3, the following figures: Tons, 10,555.79; car miles, 2,399; average haul, 12.9 miles; ton miles, 138,038.75; average ton haul, 12.89 miles; shortest haul, 8 miles; longest, 37 miles; present revenue, $3770.28; proposed revenue, $6,149.49; lading, tons, 56.75; present revenue, $20.77 per car; proposed, $33.06; present revenue per ton, 36 cents; proposed, 58 cents. (Tr. 1422.)

On page 37, group No. 55, where $34.71 is shown in each, is evidently in error, which will be checked later against my work sheets. (Tr. 1422.) Ex. 7-A shows this error, page 13. Both are wrong. (Tr 1423.) Item 55 on page 37, Ex. 7-A, should read: "Present revenue, $247.95; proposed revenue, $347.13; lading, tons, 49.60; present revenue, $24.80; proposed, $34.71." I have made no attempt to summarize Chicago Heights cars covered in Ex. 11-B, or the cars covered in 8-A. That is all.

Mr. Walter: Mr. Examiner, we would like to reserve our cross examination until tomorrow.

Examiner Faul (to witness): You are excused until tomorrow morning. (Tr. 1424.)

E. F. SAUR was recalled in behalf of respondents and testified as follows:

[fol. 926] Direct examination.

By Mr. Davis:

I heard the testimony of Witness Rummell given yesterday. I am one of the co-authors of the formula followed in this case, being my Exhibit 5. Under that, car repairs have been worked out on the time element basis. My experience and observation of the operation on the Pennsylvania Railroad through my terms of service covers 25 different positions. During the time I was yard clerk making car records I put in one year investigating reports of over, short, and damaged freight, personally investigating the causes of freight claims, which was a pioneer movement of what today is common practice on all railroads. My work being confined to one division, but I rode local freight trains, through freight trains in and around yards, settled personal injury claims, came in contact with the causes of such claims, etc. I was yardmaster in a coal district, and remember that for 21 consecutive days was out with a small wrecking outfit picking up cars damaged in terminal service. Was yardmaster where classification service was performed on practically every train. In 1917, when we came to devise a formula that could be used without having too great expenditure of effort and which did not pretend to produce 100 per cent result, but from 85 to 95 per cent correct, I took part in that; and this Chicago switching cost investigation is giving us opportunity to show the formula will produce 90.8 of the total cost. (Tr. 1427.) My work in these different positions and particularly that as yardmaster gave me an opportunity to observe and absorb knowledge of way car repairs work out under the formula on the time-element basis. (Tr. 1428.) No current records are kept showing anywhere near the number of times a freight car is handled in terminal service, or terminal mileage, and if there were, would mean very [fol. 927] little because it would record only movments of freight cars between yards and between yards and interchange points, and would not furnish any sort of reliable information as to number of times a car must be handled in classification yards. At an industry it is practically

necessary to switch every car. We feel that the day basis is fair in determining cost of terminal operation. Though not in a position to prove it from actual figures, I think opportunity for damage is much greater in terminal service than it is in a road haul. I have seen transportation from the old link and pin couplers on freight cars through the transitory stage where there was part of the time one kind of couplers and part another, and have seen increasing number of interlocking plants installed for the purpose of saving road trains starting and stopping, and my experience and observation causes me to believe that the per day basis is as fair as humanly possible to use, always being ready to use a better one if one can be devised through constructive criticism. (Tr. 1429.)

Mr. Davis: You may take the witness.

Mr. Walter: Mr. Examiner, since Mr. Saur will undoubtedly be here during the course of the hearing, I should prefer to examine him after I cross-examine Mr. Rummel. (Tr. 1429.)

G. W. Renwick was sworn and testified as follows:

Direct examination.

By Mr. McCornack:

Am Vice President in charge of sales of the Chicago Gravel Company and have not heard the testimony in this proceeding, but have read a part of the record in the case. (Tr. 1430.) Our company produces sand and gravel but the products we sell are mainly washed gravel and torpedo sand. Am familiar with prices generally on sand and [fol. 928] gravel and competing materials. In such selling, we compete with crushed stone and slag produced within the Chicago District, and sand and gravel from outside the district. The Joliet gravel district is peculiarly related to crushed stone shipments in the Chicago District. Joliet gravel is the principal competitor of crushed stone in Southern and Eastern parts of the Chicago District. We cannot sell gravel on the West side of the district because of crushed stone quarries, nor on the North side because of sand and gravel from zones 1 and 2 and on account of crushed stone within the district. (Tr. 1431.) Consid-

erable sand moves from Indiana to the Chicago District but no gravel nor does gravel move to the district from points in Northern Illinois and Wisconsin to the South side of the Chicago District, speaking generally. The competition in the Southern part of the Chicago District is crushed stone originating in the Chicago District and gravel from our Rockdale pit. (Tr. 1432.) In computing our prices, we must know and take into account our freight rates to the Chicago District. To reach the Northern part of the Chicago District our rate would be 85¢ per ton. (Tr. 1433.) From Northern Illinois pits the rate to the same point would be 65¢ from plants within 50 miles of Chicago, 70¢ within 100 miles and 75¢ from those within 150 miles and the rate on stone in the district to those pits is 50¢ generally and in a few cases, 60¢. Joliet cannot meet this competition in the Northern part of Chicago. We sell our product by the ton, but the price is based by cubic yard, 3,000 pounds. (Tr. 1433.) I have prepared Exhibit No. 86, showing delivered price of Joliet gravel and Chicago stone for single and joint line hauls to points within the district assuming Mr. Womer's testimony was correct as to the production cost of sand and gravel (Tr. 1434), which was of-
[fol. 929] fered and received in evidence, marked "Exhibit No. 86, Witness Renwick." (Tr. 1434.) Assuming Mr. Womer's figures to be correct on single line hauls under present rate basis, Chicago district crushed stone has an advantage therein of 25¢ per yard over us. If they get their proposed increase, it will have an advantage of 12½¢ per yard over us. On joint lines under present rate, crushed stone has an advantage of 55¢ per yard over us, delivered at destination and if proposed increase goes in they will have an advantage of 30¢ per yard. The last two are for joint line deliveries. The best we could possibly have if they get their increase and we keep our present rate is that they would have the same rate per yard as we would, based on the fact that crushed stone weighs 2,500 pounds per cubic yard and a cubic yard of gravel, 3,000 pounds. There is no competition encountered by stone or slag in the Chicago District that is not encountered by gravel from Joliet. Under present adjustment of freight rates, Chicago's stone and slag have a monopoly.

Cross-examination.

By Mr. Walter (Tr. 1435):

I would want the rates on all commodities raised in the Chicago district if that were necessary to give us proper relationship in our rates on gravel as compared with crushed stone. There has always been a relationship between the rates on sand and gravel from Joliet and crushed stone in Chicago. My testimony goes only to sand and gravel and we are not particularly interested in the other rates such as iron, steel and oil. We would have no desire to see an increase in rates on other commodities, if they would not bother our rates either way. (Tr. 1436.) There is a remote connection between the rates on oil in the Chicago district and rates on sand and gravel from Joliet. I think we pay a little of their revenue, that we pay on our commodity, enough to take care of the trans- [fol. 930] portation charges on something more than we ship, and that is our only interest in this case. We are only interested in sand and gravel rates versus the crushed stone rates. (Tr. 1437.)

L. A. Behrle, recalled as a witness, testified as follows:

Direct examination.

By Mr. McCornack:

I have three points I desire to dwell on in addition to the testimony previously given by me. I have prepared an exhibit marked 87, showing history of rates on sand and gravel from Joliet to local deliveries on the Atchison, Topeka & Santa Fe, Chicago & Alton, and Chicago, Rock Island & Pacific at Chicago, to show what rates enter into competitive situations between gravel from Joliet and that in the district. (Tr. 1438.) Compared with Womer's Ex. 39, it appears that from just prior to June 25, 1918, to the present time, single-line Baltimore & Ohio Chicago Terminal rates were increased 20 cents, Chicago & Eastern Illinois 20 cents, Indiana Harbor Belt 20 and 25 cents; that the so-called Lowrey joint rates were increased 20 cents, but from Joliet to Chicago the Santa Fe rate was increased

35 cents, the Chicago & Alton 45 cents, the Rock Island 35 cents; at one time the Santa Fe and Rock Island rates were the same as the so-called Lowrey basis in the district, and the same as the rate of the Baltimore & Ohio Chicago Terminal. General Order 28 increased these rates, and from Joliet were increased a flat 20 cents per ton, disposing of fractions as required in that order. District rates were first increased in the same amount, but thereafter, in November, were revised and reflected only a 25 per cent increase. (Tr. 1439.) (Ex. 87 offered and received in evidence, marked "Ex. No. 87, Witness Behrle.") (Tr. 1440.)

[fol. 931] I have prepared Ex. No. 88, headed "Analysis, Etc." Certain producers have testified as to their satisfaction with the present basis of rates within the district, and if change was to be made, should be on the basis of car rates, using 100,000-pound marked capacity of car as minimum, with a rate of $20.00 per car for single-line hauls, $25.00 for two-line and $30.00 for three-line. Under present rules carriers permit all cars to be loaded 10 per cent above marked capacity, and they are restenciling cars indicating the maximum load limits. (Tr. 1440.) We load many 100,000-pound marked capacity cars to 125,000 pounds or 126,000 pounds. This exhibit shows rates per ton which result if a 100,000-pound marked capacity car is loaded with 55 tons. That loading is possible and is done every day, and a car can be loaded far in excess of that if there is any incentive to do it. (Tr. 1440.) This exhibit shows that proposed single-line rates would be reduced from 40 and 50 cents a ton to 36.36 cents; two-line hauls, 50 cents to 45.45 cents; and three-lines from 60 to 54.54 cents per ton, based on those loadings. This basis would permit preference in furnishing cars. The industry receiving the greatest number of large-capacity cars would benefit. An 80,000-pound capacity car would load under normal circumstances 88,000, whereas a 100,000-pound car could be loaded to 110,000 pounds. There would really be no extra revenue for the 8 tons in the one case and the 10 tons in the other, and the industry receiving the greater number of large cars would benefit under an arrangement of that kind. (Ex. No. 88 offered and received in evidence, marked "Ex. No. 88, Witness Behrle.")

At the time I testified in May, did not have Mr. Maynard's Ex. 36 before me, and now point, as I did with Ex. 37, that there is proof in the exhibit that the three-[fol. 932] line shipments indicated on page 1 as being .01 per cent of 1 per cent, are in fact considerably in excess of that. Totaling the cars shipped from McCook to carriers not connecting with Chicago & Illinois Western, we find 6,286; subtracting from those the two- and three-line shipments from all other producers at McCook, shown on page 1, or 4,179, there must have been at least 2,107 three-line shipments by Dolese & Shepard, which would amount to 25.96 per cent rather than .01 per cent. (Tr. 1442.) They endeavored to show very few 3 line shipments, whereas Dolese and Shepard are located on the Chicago & Illinois Western, which has no direct connection with a good many lines, although in the Lowrey tariff, 21 series, an industry on that line which would be Dolese and Shepard is given the 2 line basis of rates for 3 line hauls within the district. It is not claimed that change will be made in that and shippers do not propose this change though it has been stated on the record that stone producers, (Tr. 1442) are in favor of an all commodity basis within the district.

Cross-examination.

By Mr. Davis:

The Lowrey Tariff only names rates for 2 and 3 line hauls, it does not include single line. The 3 line haul is 10¢ higher than for 2 lines and wherever Chicago & Illinois Western is accorded direct interchange rate or the 50¢ rate, though it does not make direct connection with the other road, the stone company has an advantage of 10¢ under the Lowrey adjustment. The Chicago & Illinois Western switching tariff shows they do not have these direct connections. (Tr. 1443.) Under the carriers' proposal the rate for a 3 line movement would not automatically become 4¢ from points on the Chicago & Illinois Western. It would not under the tariff you have on file, because it shows that road has a direct interchange with [fol. 933] these lines when as a matter of fact it does not. That has been the situation ever since the Lowrey Tariff was established. There have been certain adjustments

within the district which equalize one stone producer with another and is the same adjustment that we have been seeking from the Joliet district for a good many years.

R. C. DAVIDSON, called on behalf of respondents, was sworn and testified as follows:

Direct examination.

By Mr. Davis:

I am general freight agent for the Chicago, Rock Island & Pacific Railway Co., at Chicago. Generally speaking, my views coincide with those of Mr. Behrle, freight traffic manager of the Chicago & Alton, given by him this morning, but with this exception; I do not agree that rates from zone 1 points on sand, gravel and crushed stone to points in the Chicago district should be the same as within the Chicago District. The Commission should recognize the commercial situation existing in a common market like Chicago with district producers vs. outside producers and fix a level of rates in the district that will make the level from zone 1 points or outside zones on a more comparable basis with the level within the district. (Tr. 1445.) In the Commission's decision, in Docket 19557, a spread of 5¢ per ton between single line road haul rates to Chicago and single line rates within the district was proposed. The 60¢ rate was not fixed within the district, but the 65¢ rate was made with relation to the proposal of 60¢ within the district. The Commission fixing a level of rates under this general investigation in the District should not make the spread less than 5¢ per ton within the district as against zone 1 points. There are no line haul rates under con- [fol. 934] sideration but my statement is based on other statements which have been made here today and which are already of record in this case. (Tr. 1446.)

Cross-examination.

By Mr. McCornack:

The Rock Island has a one line haul from Rockdale to the Chicago District over which we handle sand and gravel

to Chicago, in competition with crushed stone within the district.

Cross-examination.

By L. A. Behrle:

It is self evident there should be some spread between the district rates and the rates from Joliet regardless of single line or joint line hauls. If the spread is good for a single line it would be good for the joint line haul. (Tr. 1447.)

Examination by Examiner Faul:

While an answer to your question should be based upon a cost study which I have not made, offhand, I would say that it would be more expensive to handle a road haul shipment from points outside the district than between points within the district and even so, they should be related to the rates within the district but from outside points rates should be somewhat higher than from points within the district, and that the rates within the district should not be less than 5¢ under, or more than 5¢ under the rates from outside points. (Tr. 1448.)

Cross-examination.

By Mr. Livinghouse:

I do not propose any increase from outside the district into Chicago but the rates from outside points are higher than the rates within the district today. (Tr. 1449.)

Mr. L. A. Behrle: The situation is an impossible one under present rates. The Commission has fixed 65¢ from the first zone outside, to the Chicago District, which pro- [fol. 935] duces $32.50 revenue, minimum 40,000 pounds, which applies from within 50 miles of Chicago from any point in the first zone, either in Indiana or Illinois. The $24.00 minimum or the present $19.00 minimum does not apply to sand or gravel.

J. S. Brown, recalled, testified as follows (Tr. 1451):

Direct examination.

By Mr. H. J. Campbell:

I have prepared Ex. No. 89. (Said exhibit received in evidence, marked "Ex. No. 89, Witness Brown.") (Tr. 1452.) It consists of 22 sheets. I stated at the previous hearing that Chicago was not treated as liberally in the matter of absorption of crosstown switching charges on grain and grain products as was the case at other markets with which Chicago people compete. (Tr. 1452.) This exhibit shows rates on grain and grain products for intradistrict movement at other grain markets and milling centers, principally in the West. It shows what may be termed "reciprocal switching rates" charged by roads doing switching incident to road haul, either preceding or following roadhaul. Such rates are not in this case, but are shown as a matter of information and the rates referred to are designated as intradistrict. (Tr. 1453.) The rates of different railroads in the other markets vary. One may charge more or less than the other. One may charge more to and from one connecting line than it does to and from another in the same city. They are variable rates just as at Chicago, indicating that they were not made in those other cities with respect to cost any more than were the rates in Chicago. We make the point by this exhibit and our testimony that the measure of rates in Chicago, and the reasonableness of the rates, are properly comparable with those in other cities where there is a substantial crosstown [fol. 936] movement of grain and grain products. (Tr. 1453.) We think the investigation in Chicago of rates on grain and grain products intra-district should not be made unless at the same time the Commission institutes an investigation of the same scope at other markets with which we compete, because grain sold in Chicago from any producing field cannot command a higher price, export or domestic, than the same kind of grain sold from any other market in the United States. (Tr. 1454.) Crosstown switching, whether or not absorbed by the carriers, is something that should be made a part of Docket 17,000, part 7, under the Hoch-Smith resolution, because any increase in existing charge or in any rate above a nominal figure for

switching grain or grain products in any large terminal or primary market not absorbed, affects the price, to the producer because the margin of profit in the handling of grain is so small that no particular market or dealer could stay in business if his total charges are higher than his competitors. (Tr. 1454.)

This exhibit shows rates at the Missouri River markets, St. Louis, East St. Louis, and Minneapolis, but we have competition at other places where the switching is less in volume than at the points named. The other markets are such as Milwaukee, Duluth, Indianapolis, Ohio River, and similar ones in Central Freight Association territory, but which compete with all other markets. In the term "grain" I include field seeds and grass seeds, on which rates are based generally with respect to the grain rates.

Page 1 of the exhibit shows rates of the Santa Fe at Kansas City, Missouri-Kansas. The last item shows 2½ cents per 100 pounds, minimum 80,000 pounds, grain from elevator A on Santa Fe to a connecting line, which is the highest rate to be found for switching grain at any point in the [fol. 937] West, and higher even than the Santa Fe charges from a connection to an elevator; and for the reason that the railroad transporting that grain or its products from Kansas City to any point where the rate is 10 cents per hundred pounds or more absorbs that 2½ cents per hundred pounds. (Tr. 1455.)

Should the Santa Fe switch grain from elevator A to a connecting line and that was switched from a connecting line to a mill, and the products of the grain should move out via the Santa Fe to Chicago, St. Louis or any other place, the Santa Fe would absorb its own switching charge of 2½ cents per hundred pounds, the switching charge on the connecting line on wheat into the mill, and in addition the switching charge from that same connecting line of product out to its connection with the Santa Fe on the outbound road-haul shipments. (Tr. 1456.) In the previous hearing, page 936, I mentioned this.

The exhibit shows differing charges on grain to elevators of the Santa Fe when from different railroad connections. Some are $4.95, some $8.10 per car, and are quite generally higher, not only on this page, but on other sheets than the so-called railroad switching rate for identically the same service; the only difference being that in road-haul service

it is considered a reciprocal switching charge while on crosstown it is not.

Page 3 shows charges of Chicago, St. Paul, Minneapolis & Omaha Railway at Minneapolis, intradistrict charges being $1.80 and $2.25 per car, minimum $6.30 for through movement; meaning if a two-line haul and the charge for each railroad was $2.25, making a total of $4.50, the shippers would have to pay this minimum of $6.30. If a three-line haul, resulting in $6.75, that would be collected. The principal absorption at Minneapolis is on outbound road-haul business on the grain products moving from mills to [fol. 938] storage warehouses, later reshipped in road-haul movements. This is the only purely crosstown switching absorbed in Minneapolis, but the charges are very low compared with Chicago or elsewhere. (Tr. 1457.)

Page 4 shows rates of Chicago, Burlington & Quincy at Council Bluffs, Omaha and Kansas City.

They are about the same in Kansas City as the Santa Fe, except the Burlington makes distinctions on the lighter weight grain; the latter, from an elevator on its line to a connecting line an intra district movement charges 2¢ per 100 pounds, minimum 60,000 pounds on grain except oats and on the latter 2½¢, 40,000 pound minimum or ½ the minimum of the Santa Fe for a similar movement. (Tr. 1457.)

The Burlington's flour charge is 2½¢ minimum 40,000 but all of these charges are absorbed when the movement is outbound for road haul. Sheet 6 shows Great Western's charges $2.25 for road haul between connecting lines and industries at Council Bluffs but for the same haul on intra district business it is $4.95. Its single line haul is $6.30 and at Omaha its charges are as low as $2.25 on road haul and intra district as low as $4.95. (Tr. 1458.) Between connecting lines at Omaha, and elevators and mills in Council Bluffs, in crossing the bridge is only $2.25 per car. Page 8 shows charges of Chicago, Milwaukee & St. Paul at Minneapolis. Intradistrict charge from connecting lines to industries on grain and grain products $2.25 per car with proviso that minimum through charge shall be $6.30; grain and grain products from industries intra district 15½¢ per net ton subject to minimum charge of $6.30 for through movement which might involve 3 lines but generally 2 lines. (Tr. 1558.) Intradistrict movement be-

tween industries on its own line the grain and grain products rate is the same, $6.30 per car, being less than on [fol. 939] other traffic. Page 11 shows Illinois Central charge between Council Bluffs and Omaha or South Chicago on grain is $6.30 per car, or more than twice the Chicago Great Western charge for the same service across the Missouri River, which is likewise absorbed by outbound carriers on the outbound movement. Page 18 shows charges at St. Joseph, Missouri, in Mr. Boyd's tariff, issued for all railroads on joint haul switching except grain, grain screenings, railway equipment, coal and coke. The charge for joint haul between two industries on two different roads on grain, grain products, hay, seed, alfalfa feed, alfalfa meal and molasses feed, $9.00 per car, or equivalent to $4.50 for each line in a 2 line haul. Single line haul is $6.30 except on grain from elevators on the Union Terminal Railway to mills on the same railway. (Tr. 1459.) Pages 19, 20, 21 and 22 show the situation at St. Louis, the last 2 pages covering switching charges incident to road haul business. The intradistrict charges shown on pages 19 and 20 between one railroad and its connections to and from locations in certain groups are as low as $1.80 per car. In some instances the minimum charge is $6.30 for a joint haul of 2 lines or more. The comparison of the present cross town switching rates in effect in Chicago on grain, grain products, etc., with the rates shown in this exhibit with similar rates shown in this district indicate that the present Chicago rates are reasonable or that they are high enough and that they should not be increased although there are no car rates on grain products at Chicago such as you will find in the exhibit applying at other markets. (Tr. 1460.)

The total capacity of Indiana elevators in the district, including that of the American Maize Products Co., which is not a mere elevator, devoted to merchandising is 1,675,000 bushels, or a little over 3% of the total capacity in the district. Though rates on grain and grain products are on the Lowrey basis for joint hauls we feel that the rates on [fol. 940] grain products should not be further increased. They should be closer to the per car basis on grain. Grain products do not load as heavily as grain but that is no exception, in the Chicago District as compared with other districts. (Tr. 1461.) The requirement for minimum load-

ing in the Chicago district is greater than in other cities which in some instances at such cities is 40,000 pounds, being the general minimum throughout Western trunk line territory. At those points a car load of products may move to Chicago from an outside mill and receive delivery at the flat Chicago rate for 40,000 pounds where our cross town movement must be loaded up to 60,000 pounds or at least that much weight must be paid for if it is not in the car. (Tr. 1462.) The position of those engaged in that business is that the rates should be reduced instead of increased and if increased, we repeat what we said at the previous hearing, that the charges should be absorbed and if necessary to make a second delivery, that should be absorbed also. (Tr. 1462.) We are not in accord with the theory of the all commodity basis. Mr. Beyers referred to the birth of the all commodity basis with which I had something to do. It was thought at the time that it might be considered a nominal rate although higher than in other places, especially the minimum which the shippers sought to get at 50,000 pounds, (Tr. 1462) but a road doing much switching for other railroads would not submit to lower than 60,000 pounds minimum for reciprocal switching which set that figure for cross town switching. (Tr. 1463.)

The important part of the Lowrey agreement effective in tariff form in 1911 was the uniform application of Chicago rates for all railroads to and from all industries which placed the Chicago & Northwestern on a parity in so far as being in the South Chicago District is concerned, with a railroad in the South Chicago District. Comparing that [fol. 941] railroad with the Rock Island, each are strong competitors for traffic from the Canadian border to the Gulf of Mexico. Each has rails into Minneapolis and the Missouri River. The Rock Island enters the South West and the Northwestern into trans-Missouri territory. The Lowrey arrangement which the shippers desired, permitted the Northwestern to compete with the Rock Island and every other railroad for business in and out of the South Chicago district, the Calumet district; otherwise it could not have gotten business. It has gotten very little return business because it has not opened up its North Side district and neither has the St. Paul, to competitors to and from points West of the Indiana-Illinois State line. The Northwestern lost nothing, but gained a lot by the Lowrey

agreement. (Tr. 1463-1464.) The intradistrict business was secondary in the Bowrey agreement but it was thought proper to have some understanding as to joint haul rates so that, as on the road haul business, all shippers would be on an equality. The man using 2 lines would pay for it and the one having a single line would pay the single line rate and the man required to use 3 lines would have to pay a little more, although the single and 2 line rate was the same, which is the case today. Since then, shippers have voluntarily, after proper showing, agreed in many instances and between quite important roads, that the rate basis be changed to the higher 3 line charge instead of the previous 2 line basis so that the pushing out of railroad yards and the following of the industries outwards has cost the shippers something. (Tr. 1464.) They have in many instances agreed to pay 3 line instead of the 2 line rate though there still exists interchange points where 2 lines can interchange direct. (Tr. 1464.) The intradistrict part of the agreement was that there should be no increase in [fol. 942] the charges on grain; and that certain single line exceptions would be made even when the rate was as low as 1½¢ for 2 lines, or $9.00 per car. They propose $21.00 today and with Chicago's business growth and with the extention of railroad facilities to take care of intradistrict business but principally road haul business as well, we feel that the increases we have had are in keeping with increases made in switching rates in other cities; (Tr. 1465.) A larger percentage increase in fact than in Minneapolis, Missouri River, etc.; anywhere West of the Milwaukee-Chicago-Peoria-St. Louis line, the increases were less than we had. (Tr. 1465.) With these increases since 1911, single line exceptions have increased. With the increase from 1½¢ to 2¢ and on up to 2½¢ for 2 line hauls, single line exceptions were inaugurated and there were good reasons for them. The railroads making them had good traffic reasons for them and industries requesting them had good reasons because of competition. (Tr. 1465.) The railroads propose that nothing be considered except the cost. We think the Commission should investigate the reasonableness of the rates here compared with rates in other places; value of service to the shipper, whether it will put him out of business or not or curtail his business; and the carriers risk, etc. While the nominal rate so called becom-

ing effective in 1911 was relatively small and could not create much inequality, when advanced to a high plane, what was originally intended to be a rate equal for all, becomes unequal for the man who cannot afford to pay it on his commodity; and grain and grain products are articles which cannot afford to pay any increase, therefore, we want the Commission to understand that we are not in favor of the all commodity basis. (Tr. 1466.)

[fol. 943] When the rate goes so high we think the rule of classification should enter into it; and charging a rate of 4 cents per hundred alike on stone and higher-priced light loading goods with 60,000 pounds minimum, even though it may move from outside for 30,000, 40,000 or less, we should consider the classification theory, as it will be necessary to permit some of them to exist. (Tr. 1466.) Transit is very essential in the grain and grain product business. All interior markets and dealers have transit. (Tr. 1466.) In form Chicago has transit, because outbound rates are proportionals, in some instances 8 cents per hundred less than local rates. These proportionals will not apply on reshipments until inbound tonnage is registered, submitted to propert supervision, and on reshipment inbound tonnage billing is surrendered upon proper record kept; and the Chicago market is on a transit basis as though at an interior point, and reshipments move out on the balance of the rate instead of proportional rates.

For a two-line haul in Chicago the carriers propose 3½ cents per hundred, minimum 60,000 pounds. Minneapolis is a large milling point of wheat and rye and makes heavy shipments of all kinds of grain. Grain may move from Minneapolis to Fort Dodge, Iowa, and from thence to Chicago, at 3½ cents per hundred pounds, more than the reshipping rate from Minneapolis to Chicago. On wheat and flour from Minneapolis to Chicago the rate is 13 cents, and coarse grains and certain coarse grain products is 11½ cents per hundred pounds, which are always suggested by carriers as the lowest proportional rates existing in Western trunk line territory, influenced by water competition from Minneapolis through Duluth to Chicago and Milwaukee. (Tr. 1467.) But these rates are applicable on grain to an interior point like Fort Dodge or Des Moines; and [fol. 944] the extra charge for the considerable out-of-line haul over the roads from Minneapolis to Chicago direct is

3½ cents per hundred pounds. The movement through Fort Dodge to Chicago is 178 miles farther than direct from Minneapolis to Chicago. (Tr. 1468.) A similar arrangement obtains at Des Moines on the Chicago Great Western. Grain may be taken there, cleaned, milled or stored, and the charge, including the out-of-line haul, is only 3½ cents, though from Minneapolis through Des Moines to Chicago is 292 miles farther than the direct haul from Minneapolis to Chicago via Chicago & North Western railway.

The Rock Island has a similar arrangement via Des Moines, and their haul from Minneapolis to Des Moines and to Chicago is 291 miles farther than the direct line from Minneapolis to Chicago. The Rock Island is one of the long lines from Minneapolis, perhaps the longest, and its distance is 524 miles. (Tr. 1468.) But it sees fit to meet the short line rates of the Chicago & North Western and stands that 104 miles down and back for 3½ cents, and they propose to charge us 3½ cents here for a 2 or 3 mile haul. (Tr. 1469.) This haul bears on the competition and whether or not it is reasonable to raise our rates from $4.95 per car to 3 cents per hundred pounds for a single-line haul. There are no joint rates in the Chicago district on grain; all are single-line rates, and the rate is paid over every railroad. We pay perhaps a connecting two-line rate. Neverthless it is an independent rate for the movement over every railroad. (Tr. 1469.)

Chicago and Milwaukee are in competition, and these markets afford Western railroads like the North Western and the St. Paul the longest haul they can get. Their rails end there, and the rates are the highest they have to any places in the West. The North Western from any station [fol. 945] on its line, Clinton and west, takes grain to Milwaukee at the same charge to Chicago, though the former is 70 miles farther than Chicago. We have no quarrel with that. (Tr. 1469.) But when it takes grain from Clinton and any point west to Milwaukee, it may, after arrival there, be shipped to Chicago for nothing and the switching charge in Chicago absorbed. It is 138 miles from Clinton to Chicago, but from Clinton through Milwaukee to Chicago is 155 miles more, and a little more than twice the distance from Clinton to Chicago direct, and the rate is 13 cents. All that additional service requires no additional charge;

but for a short haul which Mr. Byers of the North Western admitted was only 200 or 300 feet from its connection to the Irondale elevator, he wants 3 cents per hundred pounds. (Tr. 1470.)

The St. Paul has about the same transit arrangement with reference to Milwaukee and Chicago as the Chicago & North Western has, but the distance for the St. Paul to Milwaukee from its stations west of Savannah is only about 15 miles greater than to Chicago direct; but when that 15 miles is added to 85 miles from Milwaukee to Chicago, you get about 90 miles additional haul for no additional revenue. (Tr. 1470.) The transit arrangements referred to on the North Western are published in their tariffs I. C. C. Nos. 9748, 9732 and 9301. Those of the St. Paul Railway are covered by its tariffs I. C. C. Nos. B-5073, B-4862 and B-5206. (Tr. 1471.)

The Columbia Malting Company at South Chicago, on the Pennsylvania Railroad and the New York Central, does considerable corn drying for the Norris Grain Elevator located on the Pennsylvania Railroad a couple of miles away. To develop the number of cars that might be taken in one switch from the malt house to the Norris Grain Elevator, I ascertained the total of 1236 cars out. The smallest [fol. 946] cut was 3 cars on December 5, 1926, and the largest cut was 36 cars on November 29, 1927. (Tr. 1471.)

On page 921 of the record, in commenting on trainload movements from the Irondale elevator to the Corn Products Argo plant, we referred to a route sheet showing a certain movement of less than 100 cars, and showed there had been a movement of a million bushels in September, 1926, requiring about 674 cars, about 2/3 of them being hauled in straight cuts and not classified anywhere. In Exhibit 83, I think, the carriers, in answering that, seemed to think the month of September is something unusual. It is not, in the movement of corn out of storage to places like the Corn Products Refining Company. (Tr. 1474.) August of this year, was much heavier, I think, than September will be. In April and May, very little Corn comes into the market and the Corn Products Refining Co., and similar plants, to keep running, buy grain in storage and have it switched to their plants and it does not go in single cars either, so September is not an unusual month. There is no month in the year that grain is not taken from storage in the Chicago

District and switched to some other elevator or some other plant. (Tr. 1472.) The New York Central's inbound switching charge of $3.60 per car is the lowest I could find on cross town business, but is not the only rate it has on cross town switching. Outbound business from its elevator at Indiana Harbor, the switching charges are higher but to a connecting line. To a connecting line, for interchange at Indiana Harbor, its rate is $5.85 per car minimum 60,000 pounds, excess, 12½¢ per ton of 2,000 pounds or fraction thereof. Grain switched from that elevator to connecting lines for interchange for points other than Indiana Harbor, the rate is $6.30 per car minimum 60,000 pounds, excess 12½ cts. per ton of 2,000 pounds or fraction thereof. (Tr. [fol. 947] 1473.) Grain switched from Albert Schwill & Co., Columbian Malting Co., and A. Dickinson & Co., to connecting lines the rate is the same as last stated as shown in Supplement 25 to New York Central Railroad, I. C. C., L. S., 806 (Tr. 1473.) The New York Central elevator referred to is operated by the Bartlett-Frazer Co. For the year ending May 1, 1928, there were switched therefrom by the New York Central to connecting lines for cross town movement—delivery in the Chicago District—328 cars, 246 being corn, 4 corn screenings, 39 oats, 17 barley and a few other scattered cars. On the first sheet covering the information so submitted to me by the operator of the elevator are the car numbers, initials, weight and dates switched to the Atlantic Elevator, Aready Milling Co., some to Corn Products Refining Co., at Argo, by the New York Central, Indiana Harbor Belt and Milwaukee roads in some cases; and where there was a 3 line haul, on the first car, the New York Central charge, for example, was $7.73, being the base rate of $5.85 and $1.88 for the excess weight over 60,000 pounds. The Indiana Harbor Belt charge was $5.40 and $4.85 for the St. Paul, making a total of $18.08 for that car. Some 2 line rates are as low as $12.43, a good many run over $13.00. Some 2 lines in connection with the Belt Railway are as high as $17.70, all depending on the weight of the car, and this basis on the excess which the New York Central charges for, over 30 tons. (Tr. 1474.) Few roads have that basis of rates now, the New York Central being about the only one. Most of them have a flat charge per car. The Bartlett Frazer Co., operated during the year ending May 1st, 1928, elevators A, B, & C, at South Chicago,

located on the Belt Railway. That company gave me the information showing the movement of those cars to show to what class of industries the business went, which were those from which the grain would either be reshipped as grain or be converted into products and reshipped out. [fol. 948] They were not movements where the second delivery would end it. (Tr. 1475.) Of the 344 cars referred to, the Corn Products Refining Co., got 141; the Nowak People at Hammond, Indiana, engaged in the feed business, got something over 20; the Atlantic Elevator, which largely serves the Aready Mill, received something like 85; the Pratt Feed Co., at Hammond got something like 20 cars, most all of which would result in a subsequent movement from the second delivery either as grain or grain products. (Tr. 1475.) That is all I have because we have not had an opportunity to examine the carriers exhibits, particularly 7-A and 11-A.

Chairman Campbell: Are there any questions of Mr. Brown.

The Witness: Just a moment further please; we have no particular interest in this but the records should show that the Chicago Switching District, although the word "switching" does not appear on the face of the Galligan tariff, is clearly defined; in both of his tariffs; the bound-ries are clearly defined. While part of that area embraces some tracks of the Elgin, Joliet & Eastern which is not a party to any of the Lowrey Tariffs, as I understand Mr. Bond's testimony, all traffic originating on the Elgin, Joliet & Eastern, whether it is at a station actually within the boundaries of the Chicago Switching District, moves outside that district to come back into it which we therefore regard as road haul business. (Tr. 1476.)

Cross-examination.

By Mr. Davis:

I represent the Chicago Board of Trade, all of its members, which embraces all elevator operators in Chicago, all of the mills, all of the feed manufacturers and all of the seed dealers. The views expressed by me represent, I think, the views of all of the members of the Chicago Board of [fol. 949] Trade. My immediate contact is with the transportation committee of the Chicago Board of Trade. The

Committee is appointed by the President and approved by the Directors, which committee is representative of all different branches of the grain and grain products trade in the Chicago District. My instructions come not only from that committee but also direct from the President. (Tr. 1477.) I have talked with the individual elevator operators with each miller, with each feed manufacturer, the Corn Products Refining Co., and the American Maize Products Company. I do not think there is any grain company doing a substantial business in Chicago that does not take the same view of this that I do. (Tr. 1478.)

Chairman Campbell: Now as to these organizations, Mr. Davis, there seems to me there is not much use in taking up the cross-examination of this witness in regard to this matter. We all know when Mr. Brown presents himself he is representing the carefully considered views of his organization and the fact that there are different firms members of that organization, seems to me are bound unless they come here and offer themselves in repudiation of his representation. It is a good deal like Mr. Galligan's organization, he represents it and represents the combined view of it unless some of its members come in and repudiate that.

Mr. Davis: Yes, I understand that, Mr. Chairman, but I was just leading up to ask Mr. Brown whether or not he knew that the Rosenbaum Grain Company agreed or disagreed with his statement. (Tr. 1478.)

The Witness: I have talked to Mr. Rosenbaum and he entirely agreed with me. I talked with him before I took the stand the last time in May, and have talked with him since; and I think the views I have expressed today are his views today. What he may have told you or somebody else, [fol. 950] of course I do not know. I only know what he said to me, and he knows what my job is, too, because he was at one time my boss.

In my Exhibit 89 I do not show switching rates in the city of Milwaukee because the buyers there, for instance an industry located on your railroad, will buy grain that is on your inspection tracks quite largely, although there is a lot of the other thing. It is not at all comparable to Chicago, in size or anything else (Tr. 1479) or as a price-making market. That statement would not apply to Omaha or the Twin Cities. But I left Duluth out because I do not think it has any crosstown switching, because the business

goes into the elevators and I suppose 95 per cent goes out by lake. One of our positions in this case is that switching rates for crosstown movement of grain should not be investigated unless that movement of grain in every city covered by my Exhibit 89, and perhaps others, is considered at the same time, especially those mentioned in my exhibit. (Tr. 1480.) There are others that should be considered, such as the Ohio River and Buffalo and other places. There might be different conditions at some of those places than at Chicago, but where crosstown movement is substantially like it, as in Omaha, St. Louis, East St. Louis, Minneapolis, though not so much at Minneapolis, all those cities should be considered, or their rates should be, at the same time as ours, because we are in competition and served by the same railroads. (Tr. 1481.) Wherever increases in crosstown switching rates on grain are proposed in Chicago, I do not think they should be dealt with unless in connection with the Hoch-Smith resolution. (Tr. 1481.) As to other commodities, not dealing with them I do not know. I do not care to express any view on anything other than grain, grain products, seeds, and other things that go with them, or anything coming under that general classification.

[fol. 951] In my testimony in May I merely stated that the grain bought on the Chicago market but subsequently moved by water, varied each year. In my fourteen years' experience the movement down-lakes varies every year. To all lake ports I have known it to be as low as 11,000,000 bushels and as high as 125,000,000 bushels. What I said in that connection in May was that taking the year 1927, I knew the carload export all-rail business was less than 3,000 cars. I have since looked it up and that is the fact. (Tr. 1482.)

The outbound road does absorb switching charges in Chicago when the grain moves out, that is, outbound switching, but not crosstown switching. If grain has no subsequent movement with the Chicago district after arrival here, the only subsequent movement it could have is to road haul out, and then the road-haul carriers absorb the outbound switching if it is switched to them by some other road. A lot of the Eastern roads have their own tracks in the elevators and mills. At certain seasons of the year

corn, for instance, arriving here, moves from one elevator to another in order to dry it. But this is not because the first elevator does not have drying facilities. (Tr. 1483.) We have here the greatest drying facilities in the country, an hourly capacity of 30,000 bushels, which does not exist anywhere else, and it provides for handling a large quantity of off-grade corn. Because of these facilities Chicago pays the highest prices for it, which draws that corn to our market to the exclusion of better grades. Elevators here buy that kind of corn, drying it in their own facilities to the extent of them; but if they buy in quantities greater than their drying facilities will handle without delaying cars, they then employ outside drying facilities such as I mentioned, like the Columbia Malting Company, and that bene- [fol. 952] fits the producer, of course. They have not sufficient drying facilities at these times, though they may be idle six months in the year, practically.

There is a mighty big movement of wheat moving from one elevator to another, due to buying or selling grain futures, but there is also quite a movement from elevators to mills (Tr. 1484), not as much as the contract delivery movement, but we have some of that. The speculative element involved in buying all kinds of grain for future delivery causes a good deal of this movement when it comes time to make deliveries. The speculator is the fellow who keeps up the prices.

When I said, regarding the Lowrey basis back in 1911, in substance, "We shippers wanted a 50,000-pound minimum," I should have used the words "We insurgents." I was with the Illinois Central Railroad at that time, and there were four other roads in addition to that one that wanted a reciprocal switching rate of 1 cent per hundred, 50,000 pounds, instead of 1 cent per hundred, 60,000 pounds. (Tr. 1485.) If that had gone through there would have been less trouble with switching afterwards, but one road, because it did a lot of switching in the lumber district where the average loading was not even 50,000 pounds, did not agree to it. (Tr. 1486.) Since that time, shippers have suggested 50,000 pounds not only as to cross town switching but also for the reciprocal allowance. In expressing the fact that we are not in favor of an all commodity basis of rates in the Chicago District, I am talking for my own people, of course, (Tr. 1486) but I do not want to be ruined

just because the other fellow may be willing to be or may have to be ruined. (Tr. 1486.) I was with the Illinois Central in 1911 and for a number of years before that. Comparing conditions that existed then with present ones, I have pointed out that the important thing accomplished [fol. 953] in 1911 was the Lowrey 20 Tariff basis which was the flat rate in and out of Chicago for all industries for all railroads, that was the big thing, but there had to go along with it, a correction, a more uniform basis on our cross town business, which, of course, was not as much then as it is now, (Tr. 1487.) which was the secondary thing but set up as a part of the agreement to make a rate of 1½¢ with some discussion as to 50,000 pounds or 60,000 pounds minimum, finally made 1½¢, 60,000 pounds. That rate has gone up 100% in some cases. I do not know whether either the railroads or the shippers at that time questioned or discussed much whether it was proper to have the all commodity basis or not. They took it, but with certain exceptions which exist today but increased somewhat. But grain always was an exception. (Tr. 1488.) Outside of grain, grain products, seeds, etc., I do not care one way or another whether they have an all commodity basis on cross town business on other commodities or not. All I am here for is to see that I get no increase in rates and if I do that it is absorbed as our competitors' cross town rates are absorbed. I think that covers the whole thing when I say that. (Tr. 1488.)

Mr. Davis: And in addition to that, outside of grain, grain products and feeds, you do not care, and you are not interested as to whether the basis of rates goes back to the condition before 1911 or not, is that correct?

The Witness (continuing): Individually, I would.

All that I am interested in is to see that there is no increase made as to grain, grain products, feed, etc., and would prefer a reduction if I could get any, though I cannot see much chance of getting any. (Tr. 1489.)

Cross-examination.

By Mr. Walter:

I do not want to get into a tangle with operating men as to whether they are operating efficiently or not insofar as the roads operated are concerned, the railroads are operat-

[fol. 954] ing efficiently, but we have thought and think the record shows that some shorter haul arrangement might be made which would be beneficial alike to the railroads and the shippers, which would interfere with some of the railroads which apparently want to operate as they do now or must operate as they do now. It takes 2 to make a bargain on joint arrangements. The Rock Island is about the only railway that will not haul its own cars for Belt connections over to Clearing; at least that was the situation once. I do not know why it does not do so, as I think all others take the drags over and bring back what is there for them. The Belt Railway charges the shipper the regular rate and I suppose the Belt has to allow the owning road some wheelage basis or some compensation for pulling those cars over to the yard and taking them away again. (Tr. 1490.) There are different ideas about operation and I would not want to go on record as saying that these railroad were not operated efficiently. (Tr. 1490.)

If we had a unified operation in Chicago, I do not care whether the systems are the same or not, and one man controlled all of the movements in Chicago, we would have shorter hauls and it probably would be done more economically. Whether that is good for the shippers and the railroads or not, I do not know, and I would rather not say. (Tr. 1493.)

Redirect examination.

By Mr. H. J. Campbell:

In regard to the cities listed in Exhibit 89, I took them because the transportation conditions surrounding the switching movement are somewhat similar to the switching movement in Chicago; but I took them largely because they are our principal competing markets and they all have a considerable crosstown movement. (Tr. 1494.) A move-[fol. 955] ment from one elevator to another in Chicago for a short haul is not comparable with a movement between Council Bluffs and Omaha, the latter being much more expensive, and the Chicago & Great Western will haul it across the river between Council Bluffs and Omaha for $2.25. (Tr. 1494.)

These comparisons in the exhibit were used to support the question of the reasonableness of the present rates; to

measure our rates with those in other cities on the same class of business, and where quite generally I presume that conditions are about the same as they are here.

Cross-examination.

By Mr. Shank:

The rate of $4.95 and $6.30 applies on a movement in the switching district that is only incidental to the entire movement, but those rates applying to that switching movement by itself, pays the actual cost thereof just as much as do these rates in other cities that I have shown here. (Tr. 1495.) I am not trying to reach a uniform basis—far from it, but I do not say that I would rather have no Lowrey agreement than to have one. I said that in so far as our business was concerned we do not want it in the Lowrey tariff if there are going to be increases; and grain has never been in the Lowrey tariff.

The reasons existing at the time that kept grain out of the Lowrey tariff exist today, and they have decidedly increased, inasmuch as these other Western markets have increased their business. They have grown up and their absorptions have increased. (Tr. 1496-1497.) At Kansas City, Missouri, the situation has become so competitive with mills in interior Oklahoma and Kansas, that the Santa Fe, the Rock Island Railway and all others, absorb the crosstown switching at those interior points like Wichita, [fol. 956] Hutchinson, Enid and Oklahoma City. That is the way that sort of thing spreads, and is the very object of crosstown switching.

Brick would not be bearing the burden of the cost of handling grain. You are comparing brick with brick, and I am comparing grain with grain, and hence there is no comparison between brick and grain. I do not agree that in the Chicago district it has got to be on the whole or not at all. (Tr. 1497.)

Answering your question as to it being fair to require $15.00 on a carload of brick as against $6.30 per car on a carload of grain, perhaps of equal weight and for an equal haul in the disfriet, I say there is no comparison. Your competition is with the other dealers engaged in the brick business. Our competition is with the people engaged in the grain products business, and I have shown what they

pay in other cities. If you are paying too much you ought to come in and try to have your rates reduced.

Chairman Campbell: Your answer is based wholly upon competition?

A. Surely.

Chairman Campbell: Suppose you were conducting an investigation, as we are here, in which we are obligated to find as early as we can the reasonable rate for the movement; would you say that brick ought to pay the same as grain? (Tr. 1499.)

The Witness: I would say not. I do not care what brick pays, Mr. Commissioner.

Examination by Mr Shank, continued:

I have nothing to say with reference to competition between sand, gravel and brick; I have no interest in it.

Examination by Examiner Faul:

[fol. 957] If as a result of the cost study made in this case it should be found that it should cost in excess of $6.30 to handle traffic in the Chicago District, I still feel that grain should remain on the present basis in view of what I have said. There should be no increase but if it is increased, it ought to be absorbed by the railroads themselves, they do it at other places. (Tr. 1500-1501.)

Cross-examination.

By Mr. Connell:

As between the Western road that brings the grain in or the Eastern road that takes it out, the charge should be absorbed by the outbound road. If there is an outbound movement it should absorb the cross town switching, even on a shipment that had first been taken into the Northwestern elevator and there sold because that is the practice. This absorption should be limited to 1 cross town movement. That is, you could have 3 movements just like you have in these other cities out in the West. (Tr. 1501.) The switching movement to the first resting place then cross town then out again. On that movement, the inbound and outbound movement is absorbed today in Chicago. (Tr. 1502.) We want another inbound switching movement to

be absorbed depending on whether there was an outbound haul or not. We would expect the inbound carrier to give us the second switch if the grain or the grain product did not move any farther, just like they do in St. Louis. There is no switching from the New York Central elevator where the grain goes out over the Lakes. I could not tell the percentage of grain coming to Chicago that moves under cross town rates for the purpose of conditioning, (Tr. 1502) but I showed something like a dozen years cross town movement of grain and it varied, I think, from 10,000 cars per year up to 25,000. That included all moved for speculative purposes or contract deliveries—all cross town movement. [fol. 958] (Tr. 1503.) In the 2 years that we had 25,000 cars, the cross town movement of corn was augmented by the need for conditioning. That need augmented that movement largely. (Tr. 1503.) All grain moving to elevators located on the Eastern roads such as the New York Central, moves out by rail. It cannot move out by lake because they are not located on the lake.

I said the movement by lake from Chicago varied, (Tr. 1503) from 11,000,000 bushels up to about 125,000,000 bushels by lake, but the percentage I could not give, it might be 30 per cent or 40 per cent in some years. Generally speaking, grain moving into the New York Central elevator does not move out of Chicago by lake because it is already in an interior elevator and it costs money to switch to a lake elevator. I gave you the movement for 1 year from that New York Central elevator via lake, of 326 cars and we know that elevator ships more than that and it would be largely an all rail business on which presumably you get the haul. (Tr. 1504.)

Chairman Campbell: We will adjourn until 9:30 o'clock tomorrow morning, daylight savings time, September 20, 1928. (Tr. 1505.)

Pursuant to adjournment, hearing reconvened at Chicago, Illinois, September 20, 1928 at 9:30 o'clock A. M.

Mr. Davis: I notice in Exhibits 8-A and 11-B, an error regarding the proposed revenue and proposed rates on account of Chicago Heights Terminal Transfer Company and the Baltimore & Ohio Chicago Terminal. We are rework-

ing these exhibits to send them to the printer and hope to have the new ones in here sometime tomorrow.

Chairman Campbell: That will be all right, I am sure. [fol. 959] Mr. Davis: And you remember there were certain documents you wanted us to furnish to the Commission, (Tr. 1507), the Illinois Commissioner and the Shippers, those bills showing the shipments and who made them and things like that. We have compiled those exhibits and furnished them to the Interstate Commerce Commission, the Illinois Commission and Mr. Walter, but we do not want a general distribution of them. Mr. Walter wants them given some number or identified some way in the record so that he may have the opportunity to refer to them in briefs and things of that character.

Chairman Campbell: I think you had better give them exhibit numbers, the next two numbers.

Mr. Walter: Details of switching cost by element number will be Exhibit No. 90 and Details of Switching and Clerical Cost by Index Numbers will be Exhibit No. 91; which were offered and received in evidence, marked respectively, "Exhibits No. 90 and No. 91." (Tr. 1509.)

M. H. Strothman was sworn and testified as follows:

Direct examination.

By Mr. H. J. Campbell (Tr. 1509):

Am supervisor of traffic of Washburne-Crosby Company, having mills, plants and elevators at Minneapolis, Kansas City and Chicago, over which I have direct supervision of their traffic matters. (Tr. 1509.) Am familiar with the movements of traffic at those different plants, including switching movements. I heard the testimony of Mr. Brown and have read his Exhibit No. 89, and the facts therein, so far as I could check them, on movements coming to our mills are correct.

Mr. H. J. Campbell: Now, Mr. Strothman, having the facts as shown in that exhibit and as testified to by Mr. [fol. 960] Brown, what would you say as to the resonableness of the existing rates in Chicago? That is, from one industry to another, on grain, as compared with the rates

at those other two cities, namely, Minneapolis and Kansas City, where you conduct milling operations?

Mr. Davis: One moment; that is objected to. (Tr. 1510.)

Charman Campbell: Let him answer; it calls for the opinion of the witness. I will let him answer the question. (Tr. 1511.)

The Witness: The Chicago rates are higher. There is more absorption of charges at Chicago. The rates generally from elevators to a mill in South Chicago are higher than at Minneapolis or at Kansas City. While the rates are high on our cross-town movement, running from $28.00 to $30.00 per car, it is all absorbed. In speaking of the $28.00 to $30.00 per car, I mean that that includes all of the switching operations in and out and crosstown; from the time it leaves the elevator where it is first unloaded until it goes out on the line haul road. (Tr. 1511.) Having in mind the switching charges at Minneapolis and Kansas City, as well as those at Chicago, I would say that these charges were not inaugurated by the railroads on the basis of cost of operation. They could not have been, because of such variations all the way through. It is an economic factor to make switching rates on grain as low as possible. It is an economic necessity for the producers to move their grains to some terminal market. They cannot hold it. That comes into elevators at Chicago of various types necessary for the milling of our product. Regardless of what our stocks may be in our own elevator, where we buy direct, perhaps in Kansas City, there are times when there is grain in other elevators that it is necessary for us to have. The large elevator storage capacity at primary markets like Minneapolis, Chicago and Kansas City are part of the [fol. 961] economic plan of merchandising of grain. (Tr. 1512.) Any charge added to the through rate or the combination rate is simply an added cost, the same as an added charge on traffic from Minneapolis to Chicago. There is keen competition between a miller at Chicago and one located at Minneapolis and Kansas City, in which switching charges would be a factor.

Have had thirty years' of traffic experience. There is a difference in the conditions surrounding movement of grain or sand, and with respect to other commodities generally. The competitive feature is more highly developed in the flour business and in the manufacturing of grain into grain

products, with its own labor, its own bags, and all of the incidental features, and the materials that go to make up the finished product. The carriers should not initiate an increase in any factor of the charge, particularly at a time when there is a great demand for farm relief. Sooner or later it comes out of the farmer. (Tr. 1513.) The switching charges in the other markets have been mentioned in Docket 17000, part 7, before the Interstate Commerce Commission, many of the hearings in which I have attended. About 12 years ago we considered locating in Chicago, and finally, about 7 years ago, bought the Star & Crescent plant on the rate basis now in effect. In my opinion the switching charge at Chicago on grain products or grain milled in transit there, should be absorbed entirely, either by the inbound carrier or by the outbound carrier—by the outbound carrier from point of milling, as is the case now, and by the inbound carrier on the second movement. (Tr. 1514.)

Cross-examination.

By Mr. Davis:

If all switching charges on grain, grain products, seeds and everything that comes into what we handle, were ab- [fol. 962] sorbed either by the inbound or the outbound carrier, I would not care what the switching rates here in Chicago were. But we have been willing to go along on the charges as they now stand; we want no increases. (Tr. 1515.) But if there are increases, we want them absorbed. The switching rates here on grain and grain products, etc., are higher than they are at Minneapolis, where we have elevators and mills as well as at Chicago.

We have mills and elevators at Buffalo. There is no relation between the switching charges at Minneapolis and the switching charges at Buffalo, independent of the line haul, because there are too many factors that intervene between Minneapolis and Buffalo. Regardless of the switching situation in Buffalo, the lower cost of transportation on the Northwestern and Southwestern grain to that point gives Buffalo quite an advantage.

Chairman Campbell: Did you ever sit in at a hearing in Minneapolis?

A. I think I have. (Tr. 1516). We do not think the switching rates at Minneapolis lower than at Chicago gives preferential treatment to Minneapolis or makes a discrimination against Chicago, because I think switching charges at Minneapolis should be absorbed. I do not care what they are; I think they should be absorbed. I would not say they are too low as compared with Chicago. Minneapolis is being preferred to the extent that its switching rates are lower than in Chicago, and considering the proposed basis going into effect at Chicago. As to present basis, we get one-line haul for $4.95 and the proposal is to make that $24.00 per car, or a 400 per cent advance. (Tr. 1517.) I would not say that the crosstown switching rates at Minneapolis should be the same as they are at Chicago. There might be varying conditions in connection with the cost study, but in so far as the miller is con- [fol. 963] cerned, switching charges in the terminal should be absorbed in order that markets shall all be equalized. (Tr. 1518.) By reason of the lower Minneapolis switching charges we are preferred in so far as our switching costs are concerned. Our operation at Minneapolis is a two-line haul at all times, on the basis of $6.30; when we draw grain from the outside we pay $6.30 for the entire movement. There is no movement from our elevator to our mill excepting by conveyor.

Q. You would not go so far as to say, would you, Mr. Strothman, that the crosstown movement that I have referred to as drayage charges, or drayage movement, rather, should be the same in all cities that deal in grain? (Tr. 1519.)

The Witness: I think that in so far as milling grain is concerned, they should be equalized by a pure absorption. That is my idea.

Q. That would equalize it if it were absorbed, but that is still not my question, Mr. Strothman.

The Witness: Well, you cannot set up one basis of rates in one terminal after a mill is located there and is functioning, and arbitrarily, by what really amounts to a rate advance, put that mill out of position with other mills.

Chairman Campbell: Just a moment, please. I do not think we ought to go into this matter or discrimination too far. I have let it in because it was sort of a comparison and perhaps had some bearing as to the lawfulness of the

proposed rates, but we really are not trying a discrimination case here between Chicago and Minneapolis. We have perhaps gone as far as we should.

Mr. Davis: While likewise, Mr. Commissioner, absorptions are not involved.

Chairman Campbell: Absorptions are not involved. (Tr. 1520.)

[fol. 964] We bought the Star & Crescent Mill at South Chicago several years ago. (Tr. 1520.) It is not my theory that the rates in effect at the time a mill is purchased should never be changed. Rates on grain products might be changed immediately after the purchase, so long as equalization of rates is maintained at all markets, keeping all millers on a parity. They cannot be on a parity unless they pay the same switching charges and the line haul charges relate. (Tr. 1521.)

W. J. Hammond, recalled, testified as follows:

Direct examination.

By Mr. Walter:

Testified previously in this case but desire to make an additional statement. The Indiana Harbor Belt for many years has maintained rates applicable from Indiana Harbor on certain commodities lower than the so called Lowrey basis, generally restricted in the territory to which they apply with minimum somewhat higher than the average. A rate of 2¢ per 100 pounds on acids applies from the Graselli Chemical Company's plant for a distance of approximately 3½ or 4 miles. (Tr. 1522.) Average loading of acid exceeds 100,000 pounds including box car and tank car loading. It has a rate of 2¢ per 100 pounds on billets, iron and steel and pig iron, minimum 100,000 pounds restricted to shipments between stations Blue Island and East, a maximum distance of approximately 11 miles. The scrap iron minimum is 100,000 pounds, but average loading from a record of over 2,000 cars was 107,000 pounds. These higher minima provide a guaranteed revenue of $20.00 per car against a 2½¢ rate, minimum 60,000 pounds or $15.00 per car. A rate of $8.10 per car applies on plant refuse such

as ashes and cinders which have no value for construction purposes. Steel mills and foundries particularly have large amounts of refuse to dispose of in this particular territory and the country being generally level, makes it difficult to [fol. 965] find a place to dispose of this refuse. This $8.10 per car rate applies on refuse moving in in cars that come in under load and are sent out loaded with refuse. (Tr. 1523.) A rate of $3.10 per car applies when loaded in private cars furnished by the shipper on which no per diem or rental charge is paid by the carrier and when tendered in movements of 15 cars or more on which no terminal or spotting service is required at point of origin or destination. We use that rate quite extensively, moving approximately 50 to 55 cars per day in units of 25 cars or more. In addition, we pay engine hour rental for dumping cars after reaching destination. We own approximately one half million dollars worth of equipment for handling this refuse including cars, track shifter, spreaders, a crane and miscellaneous necessary equipment. Under this method, we feel the car rate assessed more than covers out of pocket cost and is in a sense compensatory. (Tr. 1524.) Compensatory is used in the sense that it pays out of pocket cost. (Tr. 1524-1525.) Under all of these rates mentioned, a considerable volume of these commodities move to the restricted territory and because of their heavy loading and in units of 5 to 15 cars as to scrap and billets, and acid 3 or 4 cars, at a time, we believe these rates should be continued and that individual railroads where commercial and competitive conditions justify it, should be permitted to continue these exceptions to the general Lowrey basis. (Tr. 1525.) The out of pocket cost referred only to slag. Payment of mere out of pocket cost on a commodity might throw a burden on other traffic generally but this waste material, the slag, results from an inbound movement of raw materials upon which a transportation charge has been paid and railroads derive some benefit from hauling the refuse out. (Tr. 1525.) They benefit further from hauling out the finished commodities that produce the slag, and there [fol. 966] must be some reasonable low rate permitting the manufacturers to dispose of waste material of this character. Otherwise, they will have a heavy burden and a problem that will be difficult for them to solve. My impression, Mr. Commissioner, is that adequate revenue has

been paid on the inbound material to justify continuance of the present rates on the slag movements and that the slag movement itself on the rates applicable cause no loss to the railroad for the service including investment on the engine, (Tr. 1526) as we furnish the cars, the tracks and the railroad doing no spotting at either end, there is no possible burden on other traffic, being a different movement, separate from the general class of traffic.

Mr. Bond suggested yesterday that the Chicago District consists of something outside the Chicago Switching District. Galligan's I. C. C., No. 98, Illinois Commerce Commission 43, Indiana Public Service Commission 18, note 2, on page 8, defines the Chicago District and includes the boundaries of the Chicago Switching District, (Tr. 1527-1528) which is as follows:

"Chicago District, definition of

Beginning at a point on the shore of Lake Michigan, due North of Clarke Junction, Indiana; thence south to and including Clarke Junction (including freight interchanged between the Indiana Harbor Belt and Wabash at Tolleston, Indiana), thence southwesterly and south just west of the Elgin, Joliet & Eastern to but not including Ivanhoe, Indiana; thence southwesterly to and including Hessville, Indiana; thence westerly along the north bank of the Little Calumet River to a point just west of Globe, Illinois; thence northwesterly west of the Pennsylvania (Logansport Division) to a point just south of Dolton, Illinois; thence southwesterly to a point just south of Homewood, Illinois; thence northwesterly just west of the Grand Trunk to a point just west of Blue Island, Illinois; thence [fol. 967] north and northwesterly just west of the Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt to a point just south and west of McCook, Illinois; thence southwesterly just south of the Chicago & Illinois Western to and including Willow Springs, Illinois; thence northeasterly just north of the Chicago & Illinois Western to a point just west of McCook, Illinois; thence north and northwesterly just west of the Indiana Harbor Belt to a point just south and west of Melrose Park, Illinois; thence west just south of the Chicago & Northwestern to and including the Proviso transfer yard of that company; thence north to Addison street; thence east to a point south and west of Godfrey Yard on the Chicago, Mil-

waukee & St. Paul; thence to a point just north of the Chicago, Milwaukee, & St. Paul; thence east to the line of the Minneapolis, St. Paul & Sault Ste. Marie; thence northerly just west of the Minneapolis, St. Paul & Sault Ste. Marie to and including Des Plaines, Illinois; thence southeasterly just east of the Chicago & North Western Railway to the city limits of Chicago, thence east just north of the said City limits of the Mayfair cutoff of the Chicago & North Western; thence northeasterly just west of the Chicago & North Western to and including Greenwood Street Station; thence southwesterly just east of the Chicago & North Western to the city limits of Chicago; thence east just north of city limits to the east line of Chicago avenue or Clark street; thence northerly on the east line of Chicago avenue 725 feet; thence east to the east line of Chicago, Milwaukee & St. Paul; thence southeasterly to center line of Howard street; thence easterly on the said center line of Howard street to the shore of Lake Michigan; thence southerly along the shore line to the point of beginning."

[fol. 968] Cross-examination.

By Mr. Pierce:

Inland Steel Company has a plant at Chicago Heights and one at Milwaukee. If the relationship in rates between Chicago Heights and the district is disturbed as a result of this case, we would, in order to meet competition, possibly have to allocate tonnage now produced at Chicago Heights to the Indiana Harbor Plant. (Tr. 1530-1531.)

Cross-examination.

By Mr. McCornack:

The slag referred to cannot be termed commercial slag. We get nothing for it and it costs us around $10,000 per month to dispose of it. It has no value. This is purely waste material which we dispose of at our own expense. The rate today is open for the use of anybody who care to use it. (Tr. 1531.) Am not familiar enough with the term commercial slag to say that it should take a higher rate than this refuse slag. Ours is a refuse material of no value to us and we receive no compensation whatever for

it. It is used for no purpose at all, being dumped in some low spot. (Tr. 1532.) We have never sold it for filling purposes to the City of Chicago or to any other person, or for any purpose. (Tr. 1532.) The commercial slag and crushed stone in the district take the 50¢ rate.

Cross-examination.

By Mr. Davis:

We do not sell this refuse slag to contractors. We did give some to the Indiana Harbor Belt and wish it would take it all. We gave some to other roads but we received nothing for it whatever. We used sand to build the Markham Yard; none of our slag moved there. (Tr. 1533.) We are not opposed to an all commodity basis of rates in Chicago but believe (Tr. 1533) there is full justification for the continuation of these exceptions where competitive or commercial conditions exist and that they should be con- [fol. 969] tinued. (Tr. 1534.) The heavy loading of these commodities is a consideration for these exceptions. There are many commodities involved in this case now taking the all-commodity basis that load heavily. A lot of ours other than named load very heavily.

Heavy loading is not an element that can be given sole consideration, but it is one of the factors. Another is that billets, slabs, pig iron or scrap, which are subject to process of further manufacture, produce something from which carriers get additional revenue. The initial movement is not the final transportation charge which carriers ultimately receive for the movement. (Tr. 1534.) Scrap iron is one of the commodities and is shipped to any producer of steel. They all use it. As to junk dealers, they usually secure scrap from country dealers, which is shipped to the yard in the Chicago district, there classified into certain grades, which then moves, after sorting and grading, to the steel mills. (Tr. 1535.) The junk-dealer sorts it at his yard or place of business, taking out that which has commercial value and which suits the needs of the steel mills, and the mills buy it if the prices are right, and that is a commodity we want on the excepted basis. It is a very low-grade commodity, must be assembled in small quantities from various producers, farmers and small manufacturers; when assembled at its initial point

is of varied character, size and description. It is shipped to scrap dealers and there sorted, and being a low-grade commodity, must move at very low rates in order to move at all. (Tr. (1536.) Iron ore is our largest raw material coming in by boat, but which has borne a rail charge from the mines to the docks prior to boat shipment. From those docks it reaches our plant by water. Our docks are at Ashland, Superior and Escanaba. The rail movement of the ore to docks is comparatively short, and carriers serving [fol. 970] our plant do not participate in the ore haul from mines to docks. (Tr. 1537.)

Cross-examination.

By Mr. Shank:

We think we should have the general commodity basis with such exceptions as are in effect today, which have been in effect for a good many years. That is the basis in effect today, and the one considered by shippers and all the railroads in all of their negotiations, and so far as I know, it is the thought of the shippers today that the present basis be continued. (Tr. 1538.) I just stated, Mr. Shank, that I wanted the all-commodity basis on two- and three-line hauls, and such exceptions on single-line hauls as commercial or competitive conditions justify. (Tr. 1539.) I restrict that to single-line hauls because we would get into the destruction of the all-commodity basis if it is spread too far. There might be justification for it under some movements, but as a whole these individual single-line exceptions are relatively short hauls of heavy-loading commodities or some particular commodity having a peculiar condition surrounding its movement and a justification that would permit the rate to be published on an excepted basis. (Tr. 1539.) In eliminating these heavy-loading commodities for single-line movements we are not breaking down the basis for an all-commodity adjustment for two or three-line hauls. There are these single-line exceptions now, and as to two- and three-line hauls, an all-commodity basis is applied completely. These exceptions could be continued without general disturbance; in fact, no disturbance of the all-commodity basis for two- and three-line hauls.

The acid movements referred to are in shippers' private tank cars and they receive no allowance from the carriers.

Redirect examination.

By Mr. Walter:

[fol. 971] The exceptions mentioned in connection with the iron and steel industry apply where transportation conditions are different and in a restricted territory where the steel mills are located. (Tr. 1540.) They are exceptions made by the individual lines operating in that territory and made after full consideration of the circumstances surrounding the movement. They relate to products of the iron and steel industry and to one-line hauls. The acid referred to is practically all shipped to the iron and steel people. (Tr. 1541.)

Recross-examination.

By Mr. Davis:

This general theory justifying exceptions would apply to any industry, whether iron or steel. A certain part of our coal comes in by water. (Tr. 1541.) A large volume, however, moves in all-rail. Probably 60 per cent of our coal comes by water, but there is a rail movement from the mines to the lake on that. After navigation closes it would move all-rail. Coal we use during the period of navigation does not all move by water. We receive coal the year round from the Illinois mines and also from Eastern mines; and the coal moving by water has rail transportation up to the ports. (Tr. 1542.) The outbound product of the steel mills would move by rail. (Tr. 1543.)

Recross-examination.

By Mr. McCornack:

I cannot conceive of any special conditions that would justify any rates being higher than the Lowrey basis for switching service. (Tr. 1543.)

J. D. FORREST, recalled, testified as follows:

Direct examination.

By Mr. Walter:

[fol. 972] On page 153 and a few following pages of Exhibit No. 83 are set out briefly the allegations made in my Exhibit 23, to which carriers take exception. (Tr. 1544.) My Exhibit 23 was a report of actual movements of a number of shipments made during the test period by representatives of our company who rode the cars, and indicated precisely the movements that were made. In that I set up the description of the service that was given on the railroad working papers, which in general involved more elements than the movement actually involved. To some extent carriers deny the statements in my exhibit, but I assert they are absolutely correct. We show precisely the movements of the cars, made at the time they moved. (Tr. 1545.) The route of movement shown in the cost study and the service there shown includes services not ordinarily performed on that movement. (Tr. 1546.)

The first movement mentioned, Indiana Harbor Belt route No. 222, shows classification and movement from Norpaul to Melrose Park, covering switching to National Malleable Casting Company of 5 cars, as to which the carriers state: "The fact that a car ridden by one of Mr. Forrest's men in August, 1927, did not move into Norpaul was due to the fact that this car was given preferred service." No preferred service was requested and no request for a rush movement was made. If any preference was given it was for some reason of the carriers themselves. In several instances the carriers have accepted or practically accepted our statements regarding actual movements, and then set up a different cost. Am not able to analyze these costs, not having access to their working sheets. In a number of instances carriers taking the much shorter movements in general shown on my exhibit leave out many of the elements which are in the carriers' exhibits or in the carriers' [fol. 973] work sheets to begin with; they say following this shorter and similar line movement the cost would actually be higher than they showed originally. Whether higher or lower, these numerous departures from the working statements (Tr. 1547) of the carriers indicate a good

deal of carelessness and inaccuracy in the cost studies. (Tr. 1548.)

My Exhibit No. 92 shows division of our switching movement for the entire year 1926 between interstate and Illinois intrastate business. We have no Indiana intrastate business. During 1926 we moved 32,207 cars in the Chicago switching district, 30,069 intrastate and 2138 interstate, or 96.46 per cent were intrastate and 3.54 per cent were interstate. (Tr. 1548.) The exhibit details the various commodities. The statement shows the precise number of cars in each class for each commodity. (Said exhibit was offered and received in evidence and marked "Exhibit No. 92, Witness Forrest.") (Tr. 1549.)

My Exhibit No. 93 shows number of coke movements to territory where arbitraries over Lowery basis rates apply on the Northwestern and the St. Paul roads. It covers shipments to these particular points in 1926 and the Exhibit includes a list of the cars moving over the same combinations of roads in the same year at the regular Lowrey rate of 60¢ per ton. On the Lowrey rate, there were 3,778 cars, 818 cars at 10¢ above the Lowrey rate, 4 cars at 90¢ rate and 985 cars at $1.01 rate; these excess charges above the 60¢ rate for the year, amounted to $14,897.51. In addition to this movement, we shipped 44 cars by the Short Line, Belt Railway and Northwestern at a rate of $1.13; 95 cars by the Short Line, Belt and St. Paul at $1.26. These were not included because deliveries were made on team tracks. (Tr. 1550.) There should be some reasonable additional charge for team track deliveries over deliveries on industrial tracks but a rate of $1.13 for team track de-
[fol. 974] livery in Chicago not very far on the North side, is 12¢ more than for team track delivery in Evanston and other places; and the $1.26 team track delivery charge is 25¢ more than the line haul rate to Evanston. (Tr. 1550). In the deliveries to Industrial tracks there were 985 cars on which the full Evanston charge was made. (Tr. 1550.) The services involved to these places carrying these excess charges are no greater and involve no more expense to the carrier and no greater difficulty in operation than in many other parts of the Chicago Switching District where the Lowrey rate prevails. It is almost inconceivable that any places exist where exceptional conditions would warrant higher rates than the general commodity level. If

such exceptional conditions exist, I would admit that some additional charge might be made but that is not the case in any of these instances except so far as team track deliveries are concerned and those rates are excessive as compared to the line haul rates to the nearest point North. (Tr. 1551.) As to excess charges, our company is forced to load cars which do not have cubical capacity permitting a 60,000 pound load and the charge on this minimum weight in excess of actual weight in 1926 amounted to $8,969.23; in 1925, $9,212.76 and in 1924, $9,263.83. They furnish cars that will not permit the loading of the minimum but if we refuse them we would be tied up. The carriers do not have at all times available cars permitting the minimum loading. Our coke loads average over 30 tons but with the large number of cars in 1926, 6,164 were below the 60,000 pound minimum required. These 2 classes of excess charges should be eliminated in the settlement of this switching question. Said Exhibit was offered and received in evidence, marked, "Exhibit No. 93, Witness Forrest." (Tr. 1552.)

My Exhibit 94 shows excepted rates in which the By Products Coke Co., is interested. Many of these involve movements to team tracks. And are published by inter- [fol. 975] mediate carriers and in some sense affect the combinations, except where the Lowrey rates are applied. (Tr. 1552.) This Exhibit was prepared with Galligan's Exhibit 64 before me and has not been checked with his Exhibit 85 which displaces 64. I show special rates which are omitted from his Exhibit 64, some of which are in Exhibit 85. The rate of 40¢ per gross ton on pig iron via the Pennsylvania & Indiana Harbor Belt is used for a very heavy movement from our Federal Furnace plant on both roads to Interstate Steel Company located on both roads. The properties of these two companies adjoin, their yard tracks being not far from each other. The road haul after delivery by our engines to the interchange track is a matter of 2 or 3 blocks. There is a considerable movement to other plants not quite so close. The rate applies to a minimum of 100,000 pounds. Our actual average loading is 112,000 pounds. (Tr. 1553.) An alternative rate of 50¢ per gross ton minimum of 60,000 pounds on the Pennsylvania and 67,200 pounds on the Indiana Harbor Belt is not used by us, as we always load more heavily. (Tr. 1553-1554.) Our shipments to the Interstate Steel Company in September,

1926, were 113 cars, averaging 112,000 pounds revenue, $20.00 per car. At the minimum weight, the revenue would be $17.85. It is an exceptionally short movement for a large volume of pig iron daily, with a large aggregate over the month and the 40¢ rate is the highest the traffic will bear. If this rate is raised, there will be no revenue on this movement, as we will join our tracks with the Interstate Steel property and move the pig iron within our own property lines. (Tr. 1554.) Said Exhibit offered and received in evidence, marked, "Exhibit No. 94, Witness Forrest."

$20.00 per car revenue for this movement is not unremunerative to the carriers. The total yearly movement will exceed 1,200 cars. (Tr. 1555.)

[fol. 976] The Indiana Harbor Belt publishes a special rate of $8.10 per car on manufacturing plant refuse, except clean ashes, cinders and quarry strippings, to which Mr. Hammond referred. This rate is important to us for refuse slag only, not commercial slag. When the Indiana Harbor Belt sought to increase this rate, upon complaint to the Commission, after considering cost of service, character of business, etc., it found that the old rate of $8.10 was justified. This was about 3 years ago. In that case we showed that all slag moving under the $8.10 rate we gave away. It was used for fills by railroads. It was taken to different railroads by a contractor who handled it from our plant. We standing the expenses of putting the refuse slag on the cars. (Tr. 1556.) We do ship commercial slag but not on this rate. (Tr. 1556.) We have at our plant facilities for crushing and sizing slag such as does not move on this rate; it is not refuse. (Tr. 1557.) The Pennsylvania publishes an $8.10 per car rate from junctions with connecting lines at Irondale to industries at Calburn for refuse other than ashes and cinders. We use it to move flue dust, a waste material from the Wisconsin Steel Company to our Federal Furnace plant. We actually pay $14.60 as the Chicago West Pullman & Southern adds $6.50 to the $8.10 rate. This material is of low value and a nuisance to the Wisconsin Steel Company and of low value to us, but we have facilities for handling the flue dust from our own furnace and use that from the Wisconsin Steel Furnaces as well. This movement is a short haul of rather heavy loading material and not valuable enough to stand any material increase in the cost of its transportation. Under the present 2¢ rate,

published by the Chicago Short Line, we moved to the Iriquois Blast Furnaces in September, 1926, 468 cars of coke, average 43.2 net tons, revenues thereon $8,087.00. [fol. 977] During the year 1926, we shipped 5,058 cars of coke weighing 218,160 net tons. This movement involves a short haul; less than 1 mile. In September, 1926, we moved 714 cars of coke at the present 2½¢ rate from our coke plant to our furnace plant just across the Calumet River, mostly by the Chicago Short Line and the Pennsylvania. These cars loaded 37 net tons each, the total freight was $18,209 for 1 month. (Tr. 1558-1559.) The same rates apply on the Indiana Harbor Belt. For 1926, we shipped coke to our Federal Furnace plant, 8,268 cars loading 305,916 net tons. If this rate is increased, we might not handle the movement the same as that between our furnace plant and the Interstate Steel plant but we would be forced to the limit to find a way to reduce our cost. During the war, we used a self loading barge, moving coke from the coke plant to the furnace plant which breaks up the coke and there are objections to it which are not as great however, as the increased cost. We might dig a tunnel under the Calumet River and move our coke through it. (Tr. 1559.)

These things would not develop immediately, and we would regret to have a rate made that would force us to resort to some other means of getting coke from the coke plant to the furnace plant, this being a very short haul moving usually in trains of 20 cars, requiring no classification, in spite of the statements made in the composite study. (Tr. 1559-1560.) This movement is intrastate and all excepted rates referred to by me, apply intrastate in Illinois. They are intrastate in application. (Tr. 1560.) Our movement is entirely intrastate in the application of the rate, however. The waste slag rate of $8.10 referred to by Mr. Hammond, in his case would probably apply interstate. (Tr. 1561.) The charge mentioned to the teamtracks on the St. Paul of $1.26 per net ton on coke is one of the exceptional rates found in Mr. Galligan's Exhibit No. 85, but was [fol. 978] not in Exhibit 64. We consider it excessive because greater than the line-haul rate to Evanston, and protest against its increase. (Tr. 1561.)

The Chicago & Illinois Western publish rates between industries on its line and industries on the Short Line, the Belt Railroad being intermediate, of 2½ cents per hundred

pounds on coal tar moving in tank cars. In our case it is a through rate on private cars, and under it we ship to the 29th and Albany plant of the Barrett Company in private cars, tar, with an average loading of 80,000 pounds, with no allowance either per diem or per mile. This rate is already high, and another instance where its increase will eliminate the revenue, as the tar will move in barges if the rate is increased. We would prefer to move it in tank cars, that being more convenient for us. It is the rate Mr. Furry said they desired to continue. It is shown in Galligan's Exhibit 85 as a rate to be increased, but not shown in his Exhibit 64. (Tr. 1562.) The words at the top of the sheet, "Not shown in Witness Galligan's Exhibit 69," should be Exhibit 64. This is also an intrastate movement.

The rate of 2½ cents applies between industries on the Chicago & Illinois Western and the Short Line, on light oil. The movement is much the same, being in tank cars for which the carriers make no allowance and in which they have no investment. We consider this rate too high, as in the case of coal tar. We believe the rates on all the so-called "excepted" commodities are profitable to the carriers, as the loadings are heavy, the hauls short, and there are peculiar conditions, such as the use of private tank cars, which amply justify a departure from any regular scale of rates adopted for general use within the district. (Tr. 1563.) In going over the list of Chicago Short Line rates there is no proposal to change any of these which apply on the Short Line Road itself; that is, between two [fol. 979] points on that road. That includes intraplant service which it renders at coke plants indicated on this exhibit, and to other movements on which it is not seeking rate increases. (Tr. 1565.)

Cross-examination.

By Mr. Davis:

I have not examined the individual issues of the Illinois Northern Railway to see if the rate under suspension in I. & S. Docket No. 2900 is 3 cents, which it proposes to change to 4. (Tr. 1566.)

Cross-examination.

By Mr. Gault:

In referring to short hauls I am not advocating a distance basis for switching rates in the Chicago district. Uniformity of rates throughout the district is desirable, provided they are not too high, but the higher the all-commodity rates the more exceptions would have to be made to prevent them from being higher than the traffic can bear. (Tr. 1567.)

If the chaotic condition existing prior to the Lowrey agreement existed now there would be a very strong movement to secure the unification of terminal facilities in the Chicago district that might get us out of the difficulty better than the plan suggested here. It is not to be inferred from my answer that I would rather have no Lowrey agreement. (Tr. 1568.) I said I would prefer not to have either the chaotic conditions or the increased rates proposed. I will not take either horn of your dilemma.

Chairman Campbell: He has stated his position pretty plainly, Mr. Shank, and there is no object in trying to get him to admit that he would prefer one or the other.

Mr. Walter: There is an error on page 4 of Exhibit 94, in which we show a proposed rate on coal tar between industries on the Chicago Short Line and industries on the [fol. 980] Chicago & Illinois Western. By referring to page 50 of Mr. Galligan's Exhibit 85 I note there is no change proposed in that rate. (Tr. 1569.)

The Witness: I am glad you mentioned that. (Tr. 1570.)

J. W. Brown, recalled, testified as follows:

Direct examination.

By Mr. Keene:

Have examined respondents' Exhibits 90 and 91, purporting to cover cost study in the Chicago switching district. It assigns as cost for industry switching at the Graselli Chemical Company plant $2.633 per car for the Indiana Harbor Belt and $4.93 for the Baltimore & Ohio Chicago Terminal.

The cost per engine hour of the Indiana Harbor Belt is shown as $18.96. The time required to switch 406 cars at our plant is shown as 3360 minutes, or 56 hours, which at $18.96 per hour, equals $1061.76, which divided by 406 cars gives $2.633 per car. The 406 cars moved during the test period August 4th to 10th, inclusive.

The engine-hour cost of the Baltimore & Ohio Chicago Terminal is shown as $17.9795. The time required to switch 14 cars at our plant is shown as 230 minutes, or 3 hours and 50 minutes, which at $17,9795 per hour (Tr. 1751) equals $68.92, and divided by 14 cars gives $4.9259, which moved during the study period August 4th to 10th, inclusive.

On the sulphuric acid movement via the Baltimore & Ohio Chicago Terminal in private tank cars from our plant to industries in the Chicago switching district, there is added in the cost study for industry switching $4.9259 for outbound and $4.9259 inbound, making a total of $9.8518. In addition to this charge of the Baltimore & Ohio for indus- [fol. 981] try switching there is shown in the cost study $3.65 per car for the Indiana Harbor Belt at our plant, designated as joint switching charge. Each of the 14 cars moving during the study period via the Baltimore & Ohio Chicago Terminal could have moved over the Indiana Harbor Belt, and if they had so moved our company would have been relieved of an estimated charge of $9.86 per car. (Tr. 1572.) Have prepared statement of switching rates in other cities where our company has movements of sulphuric acid. In Toledo, Ohio, the switching district rates are 38¢ per net ton, minimum 25 tons for 1 line, 45¢, minimum 25 tons for 2 line hauls. The Graselli Chemical Co., operates a plant in Toledo and ships on those switching rates. The average distance of movement on those rates are 5 miles, single line and 8.14 miles for 2 lines. At Canton, Ohio, where we have a plant, switching rates are 38¢ per net ton, minimum $9.50 per car for 1 line; 38¢ to 63¢ per net ton for 2 lines, average distance of movement 4.24 miles, 2 lines. (Tr. 1573.) In Cleveland, Ohio, where we operate a plant, switching rates are 38¢ per net ton minimum 25 tons per 1 line; 50¢ per net ton minimum 25 tons for 2 lines, average distance of movement 5.03 miles for 2 lines. At Newcastle, Pa., where we operate a plant switching district rates are 38¢ per net ton, minimum 25 tons for

1 line, 38¢ to 50¢ per net ton at same minimum and $12.50 per car respectively for 2 lines, average distance of movement 9 miles for 1 line hauls. At Lockland, Ohio, where we operate a plant within the Cincinnati Switching District, the switching rates are 40¢ per net ton for 1 line hauls and from 40¢ to 40¢ per net ton plus $8.10 per car for 2 line hauls. Average distance moved 1 line 7.06 miles and 19.87 for 2 lines. Wherever in this statement we have omitted either one or two line hauls, it is because we had none of those hauls. (Tr. 1574.)

[fol. 982] Cross-examination.

By Mr. Davis:

At these different points mentioned, we took the rates that apply on our commodity. They may not apply on all commodities. In some instances they may be different, I could not say as to that. I could not say there is no uniform basis or an all commodity basis of rates in these other cities I have named. Our tracks are not elevated in Toledo, Canton, New Castle, etc. At our plant in Graselli, Indiana, involved in this case, the Indiana Harbor Belt performs the spotting service for all the railroads and pulls out all cars for all the railroads, removing them in trains. It is the only road that gets into our plant for spotting purposes or pulling out cars.

Cross-examination.

By Mr. Connell:

Apparently the 14 cars moving via the Baltimore & Ohio Terminal during the test period were routed that way because the customer did so upon solicitation of that carrier. The 14 cars were routed that way. (Tr. 1576.) They could have been handled by the Indiana Harbor Belt if routed that way but were routed via the Baltimore & Ohio Chicago Terminal because that company, having solicited the business, requested routing via its line. We delivered these cars first to the Indiana Harbor Belt as they take all cars outbound and the Indiana Harbor Belt delivered them to the Baltimore & Ohio Chicago Terminal at our plant. We did not route the cars via Indiana Harbor Belt. (Tr. 1577.) The Indiana Harbor Belt delivered them to the

Baltimore & Ohio Chicago Terminal under routing instructions. (Tr. 1578.)

Recross examination.

By Mr. Davis:

The Graselli Company made out the bills of lading and put in the routing, Baltimore & Ohio Chicago Terminal.

Examination by Examiner Faul:

[fol. 983] Our average single line haul on sulphuric acid and muriatic acid in the Chicago District is 6.59 miles per car moving at a rate of 2¢ in private cars. Over 50% of that mileage is for carriers' convenience, (Tr. 1578) as they did not handle the movements via the shortest practical routes. They may have handled them over the cheapest route for them, which in most cases required hauling to a yard 2 miles on 1 side of our plant and back again to an industry on the other side, the actual mileage, very carefully considered would be 6.59 per car. That compares very favorably with the services accorded with our Sulphuric and Muriatic Acid in our own private tank cars in other switching districts that I have mentioned.

Recross-examination.

By Mr. Davis:

I presume all the switching rates at the other points mentioned were based upon some relation to the cost of handling the traffic but as to an actual cost study being made before the rates were established, I could not say. (Tr. 1579.)

FRANK VANDERHOOF was sworn and testified as follows:

Direct examination.

By Mr. Keene:

Have charge of yard operations at East Chicago for the Graselli Chemical Co., and have had for 11 years (Tr. 1580.) Prior thereto, was employed at railroad work in the Chicago switching district on the Indiana Harbor Belt from about 1905 to 1917. We record the time of locomo-

tives of carriers engaged in switching in the yard of the Graselli Chemical Co. The Baltimore & Ohio Chicago Terminal engine on August 4, 1927, moved one car to our plant which was shoved in by the Pennsylvania engine. On August 5, engine 935 came in at 4 P. M. with 1 empty and moved out at 4:25 P. M., with 3 loads and was in the plant 25 minutes. On August 6, the same engine came in at 4:30 P. M., light, moving out at 4:45 P. M., with 2 loads, being [fol. 984] in the plant 15 minutes. Sunday, August 7, there was no work. (Tr. 1581.) August 8, that same engine came in at 2 P. M., with 2 loads, out at 2:10 P. M., with 3 loads; 10 minutes in the plant. August 9, the same engine came in at 4 P. M., light, out at 4:15 P. M., with 1 load, 15 minutes, in plant. On August 10, same engine in at 4 P. M., light, out at 4:15 P. M., with 3 loads, 15 minutes, in plant. Total time, 1 hour 20 minutes, handling 16 cars.

Cross-examination.

By Mr. Davis:

I was yard master at the Graselli Plant in charge of shipping, etc., yard work at the times mentioned. I am not shipping clerk. (Tr. 1582.) I have charge of the shipping and as yard master am in and around the yard. We recorded the time when the engines entered our plant and when they left. The gates there are always open except at night when there is no traffic. We take this time as a matter of record. The Indiana Harbor Belt does all the spotting in our yard. The record given here covers cars routed Baltimore & Ohio Chicago Terminal into our plant and routed out over that line from our plant. (Tr. 1583.) They do not spot those cars. We keep a record of all deliveries at our plant. We keep a record of the time all engines are in it. We have kept this record since I have been over there. Our records would show the time of any engine of any company in our plant for the past 5 years, probably, with the exception of a few that they might have missed. A clerk keeps these records. (Tr. 1584.)

Redirect examination.

By Mr. Keene:

The Baltimore & Ohio Chicago Terminal, the Pennsylvania and the Wabash bring in cars via the former's line

to our plant so that the Indiana Harbor Belt can spot them. [fol. 985] Another track to our plant is used by the Indiana Harbor Belt and the Elgin, Joliet & Eastern, and it would suit us just as well if 2 came in, one over one track and one over the other, and handled all the business. I could not say whether that would suit our customers. (Tr. 1585.) I know about the routing of this traffic but I do not know who does the routing. (Tr. 1586.) The Baltimore & Ohio Chicago Terminal simply brings the cars inside the plant and leaves them there for the Indiana Harbor Belt to spot and the latter takes loaded cars out to a point where the Baltimore & Ohio Chicago Terminal comes and gets them, sometimes the Baltimore & Ohio Chicago Terminal will go in and get a car. We do our own switching regularly with our own engine which switches in the plant all day. (Tr. 1586.) The engine is owned by the Indiana Harbor Belt but classified as Graselli Chemical Company engine because it works for nobody else but our company. The time I gave as to the Baltimore & Ohio Chicago engines in our plant is the time of arrival at the yard until the time of departure. (Tr. 1587.)

A. M. Cordell was sworn and testified as follows:

Direct examination.

By Mr. Walter (Tr. 1587):

We understood from the testimony of Mr. Galligan that the railway equipment moving on its own wheels was to be excepted from the all-commodity basis, and that no increases would be proposed on it. His exhibit 85 shows there are some very nice increases proposed.

On the Belt Railway, for movements of railway equipment from industries on its line to connecting junctions, it shows present rate $11.50, proposed $13.50, which must be admitted as an error, and should be $3.15 and $3.80. [fol. 986] On page 33 of the exhibit the Baltimore & Ohio Chicago Terminal, page 35 the Chicago & Erie Railroad, page 38 the Chicago & Western Indiana, each propose an increase from $3.15 to $3.80. On page 41 the Indiana Harbor Belt propose an increase from $3.15 to $3.78. (Tr.

1588-1589.) These increases are proposed in the statement, while the statement of the witness on the stand was that no increases on new railway equipment moving on its wheels would be proposed. (Tr. 1589.)

A. L. DREHER was sworn and testified as follows:

Direct examination.

By Mr. Walter:

Am traffic manager Hyman-Michaels Company, with a plant at East Chicago, Indiana, where we have a scrap yard for handling scrap moving inbound from various points, both Indiana intrastate and interstate, for the purpose of classifying, sorting, grading and otherwise preparing it for shipment to the steel mills. Our company and other shippers handle about 1200 cars of scrap in the district, or approximately 60,000 tons per month with average loading 50 tons to the car. About 30,000 tons move in the district under the so-called excepted rate of 40 cents per gross ton, minimum 100,000 pounds. The increases would mean $100,000.00 per year on the switching business moving under the excepted rate. Under the 40-cent rate the carriers receive revenue of about $20.00 per car, but under the proposed 3-cent rate, or 67 cents per gross ton, would receive about $33.50 per car based on actual loading, or an increase of $13.50 per car. (Tr. 1590-1591.)

Our scrap comes mostly from railroads which ship what we call railroad mix, scrap which includes most everything coming off a railroad car or a railroad right of way, which [fol. 987] requires cutting and other preparation into charging-box sizes, and sorting and grading for shipment to the steel mills. Virtually we pay 80 cents per ton at the present, figuring at 40 cents in and 40 cents out. We purchase from roads, reaching such points as Aurora, Joliet, Milwaukee and other nearby points. The rate from Joliet to the entire Chicago district is 88 cents per gross ton, and where a scrap yard is located on a line not producing scrap, the switching into the yard averages about 15 cents per ton. The Joliet man would pay $1.03 per ton to get the same scrap we are competing for into the same steel mill, compared with our present cost of 80 cents, but under the

proposed increase $1.34 per ton. (Tr. 1591.) The situation as to scrap rates is peculiar, differing in many respects from general line of rates (Tr. 1591) on other commodities, and as necessity required, the excepted rates were established. Our yard was located on the Indiana Harbor Belt and the Pennsylvania primarily to be close to the steel mills so we could compete with scrap coming in from the outside. The location of this yard meant quite an investment. Scrap moves in almost any kind of equipment, and we never object to the kind of car we get. We utilize equipment that in other lines might be rejected because unfit for loading. We have no claims, and naturally, because the scrap's value is made up primarily of labor and transportation, cannot stand high transportation, and when that cost reaches to or beyond a certain point the scrap will not move. (Tr. 1592.) If these rates are increased the movement of scrap in the district will be in negligible quantities, and the time will not be distant when most, if not all, scrap yards now in the district will move to points like Joliet, Aurora, Milwaukee, etc. (Tr. 1592), and as a result the carriers will lose here in the district a vast number of cars that they now enjoy more than ample revenue upon. (Tr. 1593.)

[fol. 988] Heavy melting steel is worth about $12.00 per gross ton at the steel mills. The increased rate of $1.34 would equal about 16 per cent of its value. If the value of scrap increased by a transportation cost reaches the point that the steel mill cannot use it at a profit, it will seek other raw materials or other sources of supply. (Tr. 1593.) Most mills here are on the water, and will mean much scrap will undoubtedly move in at a very low transportation cost by water, where the switching line would receive no revenue, as most of the steel mills have their own means of handling scrap from their own docks. (Tr. 1593.)

About 70 per cent of the scrap movement would be Indiana intrastate outbound, and about 50-50 inbound. About half would be Indiana intrastate inbound and about half interstate.

Cross-examination.

By Mr. Davis:

Have been in the scrap business about 15 or 16 years at the present location. Most of the scrap we handle into our

yard comes in here from the railroads themselves. (Tr. 1594.) Very little would be brought in from the outside into a scrap yard in the Chicago district. When you speak of picking out the good from the bad I presume you mean the various classes of scrap; but there is nothing of a commercial nature in that that could be utilized again for its original purpose or for any other purpose. It is strictly for a remanufacturing or resmelting proposition. Our function is to take the various grades, such as wrought, cast, malleable, steel, etc., sort it, break it, cut it, and otherwise prepare it, etc. If we did not function I do not know what railroads would do with their under-frames, car sides, and the like, that we take and cut it at our own yards, and if the rates are increased I do not know what the railroads [fol. 989] will do. The railroads themselves can't do this work because they find it does not pay to bother with it. They get a very low price for it today. (Tr. 1595.) All of our scrap goes to the steel mills.

It would be difficult to approximate the average price we pay the railroads for this scrap. It depends upon the quantity of a particular kind happening to be in a particular car, etc., as well as the matter of 80 different grades of scrap. (Tr. 1596.) The average price of $12.00 to the steel plants represents approximately 75 per cent of the production of all scrap, and steel is the barometer of the price of scrap. Taking all the grades that are not steel, we would find probably 10 per cent that would be worthless. It is simply offal or rust, that we lose 10 per cent upon. The remaining 15 per cent might be a little cast, a little malleable, etc. It might be worth a little more than $12.00 and some of it might be worth a little less. (Tr. 1596.) So that $12.00 is the fair price on the average per ton realized on all scrap coming in. We pay more than $1.00 per ton on the average. It would be pretty hard to estimate, but I think $7.00 or $8.00 per ton for mixed scrap would be about right. We buy from the railroads on competitive bids that will allow us our labor costs at the yard, which runs very close to $3.00 per ton prepared. The $7.00 or $8.00 price is f. o. b. track. (Tr. 1597.) The railroads' records will show what they get per ton for it.

I do not claim that this is a highly competitive commodity, but did say that we located near the steel mills because

of the particular advantage the location would give to a plant or yard, and if you raise your rate to the same level or higher than the level of the rates from outside, the scrap yards will move out of the district. (Tr. 1598.)

[fol. 990] Cross-examination.

By Mr. Shank:

As to equalizing the increased freight rate by a lower price paid for the scrap, you understand we are in competition with the men in Joliet, Aurora and Milwaukee for the same scrap. If we do not pay the price for it here it will go somewhere else. All I want is rates that are reasonable, that will move the traffic and not stifle it, and rates that will enable us to continue in business. (Tr. 1599.)

H. G. Brown, recalled, testified as follows:

Direct examination.

By Mr. Walter:

Have prepared my Exhibit 95. (Said exhibit offered and received in evidence, marked "Exhibit No. 95, Witness Brown.") (Tr. 1600.) This shows our 1926 switching business by months. In the first column the number of cars switched intrastate; in the second the number interstate; in the third total switched. In the next column the percentage state, the percentage intrastate, and the total percentage. (Tr. 1600-1601.) That year we shipped 16,588 intrastate and 377 interstate, total 16,965, or 97.78 per cent intrastatg business, and interstate 2.22 per cent. The intrastate movement was wholly in Illinois. (Tr. 1601.)

Cross-examination.

By Mr. Shank:

Whether the cars moved interstate or intrastate the price received was the same, and the matter of freight rate paid did not affect the price or the price we received. (Tr. 1601.)

[fol. 991] C. A. SHANK, recalled, testified as follows:

Direct examination:

I am in favor of a genuine Lowrey agreement as originally contemplated in 1910 and 1911, but which could not be made effective because of conditions then existing which do not exist today. But with the number who are seeking exceptions to a uniform basis, if the Commission intends to except any commodities in the Chicago District, we ask for an exception on common brick. (Tr. 1603.) We had an exception from 1911, under the basis of 1½¢ per 100 on all commodities because of loading cars to marked capacity using equipment unfit for any other road haul service. Our rate, because of this, was made 1¼¢ on common brick, moving in the Chicago Switching District in lieu of the all commodity rate of 1½¢. (Tr. 1603.) Having justified in the past a differential on common brick under the all commodity rate, if we cannot now have a uniform 100% Lowrey agreement, whatever the rates may be that are fixed by the Commission, I am in favor of having none. (Tr. 1604.)

Cross-examination.

By Mr. Walter:

We have one plant in the Chicago Switching District from which we have shipped thousands of cars on switching rates in the last 2 years. We shipped 325 cars from our Chicago Heights plant to the District in the month of July. (Tr. 1604.) Chicago Heights is in the district by tariff publication and it is immaterial whether you get them in by a line drawn around the town or by tariff. As to shipments of brick originating and terminating in the Chicago Switching District, defined in the tariff, I have not made a record of those moving within the last two years. We have shipped at least a hundred in that time. (Tr. 1605.) At times we move 100 per cent of our business from our plants [fol. 992] in the Chicago Switching District to destinations therein by truck. Today, 75 per cent move by truck. During the past 2 years, that percentage has moved by truck. My competitor located in the same place can do the same thing. If the rates are increased, it is logical that he would move his commodity by truck. If the carriers do not want the

business on the 3½¢ and 4¢ basis, they will not complain if they lose it. But I am looking farther than the fact that the carriers might be better off at the 2½¢ and 3¢ rates than to get nothing on the 3¢, 3½ and 4¢, (Tr. 1606.) because I am not letting 10¢ in front of my nose obscure the dollar beyond, because the high cost of terminal switching in the Chicago Switching District has retarded establishment of low or fair road haul rates out of the Chicago Switching District. It has been used and perhaps justifiably in every rate case that has come up. With that removed, we could ask for something without having it put up in all these cases. There is no commodity moving out of Chicago that has had its business curtailed by increase in road haul freight rates to the extent suffered by common brick. (Tr. 1607.) I would say there was decidedly less cost of switching in connection with road haul than between the same points in the switching district. (Tr. 1607.) When an engine starts from 40th St., to Grand Ave., with 10 cars and picks up 10 more to distribute in between, it costs something to pick up the 10 cars. (Tr. 1608.)

Cross-examination.

By Mr. Davis:

In making the statement that I wanted 100% all commodity basis or none, I would except factory refuse without commercial value, that no one would take from our factory if given to him and which would hinder operations if it stayed there. (Tr. 1608.)

[fol. 993] Mr. Boyle: Mr. Commissioner, speaking for the Illinois Slag & Ballast Co., complainant in Docket No. 20,006, owing to the decision of the Commission, involving slag rates from Joliet to Chicago, in which it found against our contention that there should be a difference between crushed slag and crushed stone and gravel rates, we now ask for the dismissal of our complaint here without prejudice insofar as it seeks different rates on crushed slag than on stone and gravel in the Chicago Switching District and would like to stipulate as to what my witness would testify for the reason that he yesterday sprained his ankle and it would be difficult physically for him to get here from South Chicago. (Tr. 1609.) He would testify that slag loads to the physical capacity of the car

about 50 ton; that it is a low grade commodity used for ballast and as a coarse aggregate in concrete and as a rough raw material for building; and that so far as this case is concerned, the position of the Illinois Slag & Ballast Co., is identical with the position of crushed stone operators within the Chicago District, and, of course, not the same as the stone and gravel operators outside the district who favor the advance.

Chairman Campbell: Is there any objection to the dismissal?

Mr. Davis: No objection. I think Mr. Boyle intended to state that if his witness was called he would testify in substance the way Mr. Boyle has outlined it.

Mr. Boyle: Yes, that is what I intended to say, that the witness would testify as to just what I have stated. Is that agreeable?

Mr. Davis: Yes, that is agreeable.

Chairman Campbell: We will take the motion without passing on it at the present time. (Tr. 1610.)

[fol. 994] Mr. McCornack: Mr. Boyle, when the movement of commercial slag from the pile at the steel mill to the crusher at the manufacturing point where the slag is crushed takes place, is that a rail haul or not.

Mr. Boyle: From the dump pile into the crusher in most cases is performed by the crusher desiring it.

Mr. McCornack: And any rate that is now before the Commission—there would not be any rate involved in that haul, is that correct?

Mr. Boyle: Any rate before this Commission on the haul insofar as crushed slag would be concerned would be after it left the bins at the crusher.

Mr. McCornack: Is that on the record?

Chairman Campbell: Apparently so. (Tr. 1611.)

W. J. Hammond, recalled, testified as follows:

Direct examination.

By Mr. Walter (Tr. 1611):

The movement of acid under the excepted rates previously referred to by me is all Indiana intrastate. The billets all practically move Indiana intrastate, although there might be an occasional interstate movement. The slag movement is entirely Indiana intrastate.

K. E. THOLAN, duly sworn, testified as follows:

Mr. Slater: At the direction of the Illinois Commerce Commission, an examination by its accounting division has been made of the cost study presented by the carriers. (Tr. 1612.) Mr. Tholan has been in charge of that work.

Direct examination.

By Mr. Slater:

Am supervising examiner of accounts of the Illinois [fol. 995] Commerce Commission, have been with it and its predecessor for over 9 years. During this time, have had charge of examination of all kinds of utilities in Illinois in connection with rates and other matters. This includes examination of various cost studies relating to railroad traffic. Prior to my present employment was with one of the large railroad systems and engaged in preparing various statistics and cost studies. The Illinois Commerce Commission directed me to make examination of the cost studies prepared by carriers in this case and have made an examination of the records of the steam railroads which have prepared data for the composite cost study which they have introduced in the record in this case. We have at various times conferred with the carriers in committee meetings to discuss certain portions of the data. In the investigation we have collected a great quantity of detailed information from many different records of the carriers. Some of the records are in addition to those used by carriers in preparing cost study, which they have presented in the present case. The carriers have prepared and introduced as an exhibit a very intricate cost study dealing with over 26,000 cars. The shippers representative, Mr. Oliver has been given opportunity to check the working papers in support of the carriers cost study, from which investigation such as Mr. Oliver conducted, he prepared and introduced an exhibit and a great volume of comment concerning the carriers' cost study and such other matters as he deemed important. (Tr. 1614.) At the last hearing it was agreed by carriers, shippers and commissions that a joint conference would be held where all interested parties would be represented to assemble the principal facts under dispute and prepare a composite exhibit which would include

in the main the position taken by the carriers and the shippers on these items. Pursuant to the understanding, I met with carriers and shippers and have had some part [fol. 996] in the preparation of the composite exhibit which has been prepared and introduced in the record. I have prepared an exhibit No. 96 which was offered and received in evidence, Marked, "Exhibit 96, Witness Tholan." (Tr. 1615.) Some of the results of our investigation are set forth in the composite exhibit or the supplement thereto. In view of this, we did not prepare in one volume a report of all our investigation but have prepared an exhibit relating to car repairs with some reference to switching costs which items have not been covered in the composite exhibits. The carriers used the so called Coverston-Saur formula in preparing their cost study, which provides that freight car maintenance which includes repairs, depreciation, retirements and overhead accounts should be distributed on basis of number of days that a car is used in a particular service. (Tr. 1616.)

Carriers have prepared their Exhibit No. 3 showing how they arrived at the average cost per day for this class of expense which for the 9 carriers included in the exhibit averages sixty four and a fraction cents per day. They then determined for each of the 26,000 cars in the cost study the number of days each car was assigned to a particular service. Car detention cost for each car has then been determined by multiplying the number of days by the average cost per day. In examining data supporting carriers cost study, we investigated carriers methods of determining number of days of car detention chargeable to a particular shipment. The study includes upwards of 26,000 cars which means 52,000 terminals, (Tr. 1616.) and in the limited time, it was physically impossible to check all these. We checked over 1,000 cars for both beginning and ending detention and nearly 200 for either beginning or ending detention, approximating 2,200 terminals. In collecting necessary data we have referred to car records, [fol. 997] station records, wheel reports, train sheets, demurrage reports, interchange reports, switch lists, and other records. Part of this data was furnished by some of the carriers in compliance with our request. In selecting cars to be checked, it became apparent that there would be considerable demurrage on many of them and that the

detention was probably in error in certain cases. Many were found to have a long detention and it seemed important to check some of these. The statements included in this report indicate a great number of errors made by the carriers both as to principle and facts. They also show that demurrage revenue is a matter of importance in view of the fact that that expense is included in the cost study. The average detention of cars included in this exhibit is greater than for the 26,000 in the cost study. These pages numbered with Roman numerals, 3, 4 and 5, state in general the position we have taken in regard to a part of the time that is charged individual cars and in general explains the reason we have made some deductions. Statement No. 1 following the pages numbered with Roman numerals, summaries the terminal detention of cars we checked. The first 4 columns cover cars checked both for beginning and ending detention separated between 1, 2 and 3 line hauls. The 4th column shows total of cars checked. The last 4 columns cover cars checked at only one end of the trip. That is for either beginning or ending detention. We checked these 189 cars at only one end of trip because some either originated or terminated on the Elgin, Joliet & Eastern Railroad which in setting up its car detention cost used a method somewhat different than used by the other railroads. There were 2 or 3 line haul cars which had been checked on the other railroads. (Tr. 1619.)

[fol. 998] Referring to the first four columns, the first line shows 276 cars one-line, 645 two line, and 97 in three-line hauls, making a total of 1018. We have changed the detention on 816 cars, 233 being single-line, 516 two-line, and 77 three line hauls (Tr. 1619), leaving unchanged 202 cars. The fourth line shows cost study terminal detention as included in carriers' exhibit for these 1018 cars as 297,240 hours, subdived according to one-, two- and three-line hauls. We have corrected that to a total of 218,090 hours, a reduction of 79,150. This reduction has been distributed in the following lines, according to principal reasons for making correction: The first item listed in idle time for which we have deducted 37,022 hours, representing time for car prior to placement for loading or future release by consignee, which did not appear to have any direct connection with the movement of the particular load, but which had been included in carriers' cost study.

The second item pertains to unusual delay on loaded cars, for which we have deducted 3,582 hours.

The third represents excess time on reconsigned or reshipped cars, for which we deducted 1286 hours, This time pertains to movements prior to the reconsigned movement which is included in the cost study.

The fourth item pertains to time of private-line cars while they were off the lines of the carrier, and for which we deducted 8623 hours. (Tr. 1620.)

The fifth item represents time involved in the return of empty foreign cars from base yard to interchange point after completed loaded movement, for which we deducted 6722 hours, believing that a considerable amount of such time should be properly charged to some other loaded movement.

The sixth item represents time of cars on repair tracks, [fol. 999] for which we deducted 1523 hours.

The seventh item represents miscellaneous adjustments, such as clerical errors, for which we have deducted 20,392 hours, making the total of all time deductions 79,150 hours. The distribution of these figures according to one-, two- and three-line hauls is shown.

Statement 2. In making these deductions shown here we determined them by checking each individual car involved where a deduction has been shown on sheet No. 1. (Tr. 1621.) Statement 2 summarizes net excess terminal detention on cars checked both for beginning and ending detention, indicating the railroad on which the correction was made; the statement setting up one-, two- and three-line hauls and the total.

The first line shows the Belt Railway, on which we checked 20 cars moving single line, the cost study detention showing 5093 hours, which we corrected to 4098, making deduction of 995 hours. In two-line hauls we checked 179 cars on the Belt and made a deduction of 5,476 hours on these cars. This is followed through for three-line hauls with the totals, the same method being followed. We arrived at these deductions by making an actual check of every car at both the point of beginning and the point of ending of the movement. (Tr. 1622-1623.)

The 179 cars referred to in two-line hauls were checked on some other railroad and will be duplicated in the column headed "Number of Cars." The amount of time deducted

on other railroads for these cars will also appear in the list of Excess Detention, opposite Other Carriers. The carriers did not separate total detention on two- and three-line hauls to show number of hours that each car spent on each railroad, which would have required determination of the correct interchange time on each car. A determination of this interchange time did not seem to warrant the amount of work that would have been required, and so these col- [fol. 1000] umns have been left blank in the statement.

We did not check three-line hauls on the Belt. The totals show 199 cars checked on the Belt, and that the excess detention which we have deducted for that railroad amounted to 6471 hours. (Tr. 1623-1624.)

The same explanation might be made for any one of the railroads on this page. I have simply followed the first line to illustrate the statement. In making this check we went back to the original records of the railroad to determine, for instance, from car records when a car moved in a certain movement, and also from the demurrage records we determined when a car was placed at an industry for loading or unloading, and when released by the industry from demurrage, showing when it moved in and when out, according to car records, trainsheets or other data that we could find that would show the movement of the cars. (Tr. 1624.)

Statement 3 summarizes net excess terminal detention on cars checked either for beginning or ending detention, indicating the road on which corrections were made. (Tr. 1624.) This is the same as Statement 2 except it covers the 189 cars checked at only one end of the trip. We show, however, in the second and third subcolumns of each of the main groupings, the cost study detention and the correct detention. These figures include time of the cars on all railroads over which they moved and are not confined to time spent on railroads opposite which they appear. Such figures were omitted from statement No. 2, but since the cars on statement No. 3 were checked only at one end of the trip no duplication occurs by the insertion of these figures.

There is a slight typographical error in the heading of [fol. 1001] the first column. The word should be originating instead of origination. (Tr. 1625.)

Statement 4 classifies the net excess detention in hours by carriers, dealing with 1018 cars checked completely. The

total excess detention amounting to 79,150 hours agrees with the summary on page 1.

Statement No. 5 is similar to No. 4 except it deals with the 189 cars checked at only one terminal.

Statement 6 compares number of cars checked with number of cars on which terminal detention was corrected, and deals with 1018 cars checked both for beginning and ending detention. (Tr. 1625.) The totals at bottom of the page agree with summary shown on page 1, this statement being a distribution of these cars by the carriers on which the cars originated.

Statement No. 7 is similar to No. 6, except it deals with the 189 cars checked at only one terminal.

Statement No. 8 covers 1018 cars checked for beginning and ending detention, showing distribution according to number of days' detention per car, as shown in the cost study and as corrected, being divided into one-, two- and three-line hauls, with the totals.

Referring to the total columns, we find that none of these cars were included by carriers as having a detention of one day or a fraction thereof, but we have placed 9 cars in that group. Of the 1018 cars the carriers had 7 in the two-day group, while we placed 20 in that group. In the three-day group the carriers placed 11 cars, while we placed 36 in that group, and so on. The last item in the list shows of these 1018 cars the carriers had 21 with a per-car detention over 30 days, while we left only 4 in that group, although we left some cars in these higher groups, thereby allowing car detention for such a long time per car. We have given consideration to demurrage that has been col- [fol. 1002] lected on these cars. (Tr. 1626.)

Statement 9 is similar to No. 8, except it deals with the 189 cars checked at only one terminal.

Statement No. 10 shows demurrage recorded on the cars checked, divided among single, two- and three-line hauls, and totals, showing the information by railroads. The statement shows for one-line hauls on the Belt, we checked 20 single-line cars, on which we found 23 debits and 11 credits, with no excess collected under the average agreement and also $37.00 demurrage on the straight plan. Two hundred twenty-seven two-line cars were checked on the Belt, where we found 157 debits and 88 credits, and $205.00 excess collected on the average agreement and $12.00 on the

straight plan. There were no three-line cars checked on the Belt, the total of that line being 247 cars, 180 debits and 99 credits, $205.00 excess and $49.00 collected on the straight plan. The grand total on this exhibit shows 1314 debits compared with 891 credits, and excess of $1655.00 on the average agreement plan and $440.00 collected on the straight plan. (Tr. 1627.)

The carriers included the entire cost of the detention of cars referred to in sheet No. 10 as part of the exhibit in switching service in their exhibits. As to the cars we checked, they included time from the so-called assignment of the car to the particular service until released after having been unloaded at the industry of the consignee, which included for whatever time they collected demurrage. (Tr. 1628.) No credit was given anywhere for the time these cars were in service during which the carriers were collecting demurrage or assessing demurrage for such service. Pages 11 to 14 inclusive show illustrations of the corrections we have made in car detention.

The first car on page 11, Pennsylvania No. 13079, moved [fol. 1003] in one-line haul from American Maize Corporation at Robey to the same company at Morgan Street team track, the carrier's detention beginning on September 17th and ending October 1st. We have changed the beginning detention to September 24th at noon. (Tr. 1628.) The explanation is that the car was received from Indiana Harbor Belt on September 17th. The carrier began detention on the date of interchange. The corrected detention starts with movement of empty on September 24th from Colehour yard to the industry. The idle time prior to the 24th was excluded. We made no change in the ending time. The correction we have made results in a decrease of 162 hours, making corrected detention 167 hours instead of carrier's detention of 329. On this car demurrage record showed 1 credit for the consignor and $2.00 collected from the consignee. This was Pennsylvania car being returned empty by the Indiana Harbor Belt on September 17th. It went to the Colehour yard and moved from there on the 24th for use in a one-line shipment which is included in the cost study. This was a car owned by the Pennsylvania, performing the service, and the detention should not have started on the movement until the car was really assigned to this service, which as a general rule should be when the

car moves empty from the yard to the industry. (Tr. 1629-1630.)

The next car on that page is New York Central 255453, moving in a two-line haul originating at Irondale elevator of the Chicago & North Western, destined to American Maize Company on the Indiana Harbor Belt. The North Western began detention of the car on September 8th, which we corrected to September 14th at 10 A. M., for the reason that the carrier began detention at the time the empty car was placed on interchange track by the Indiana Harbor Belt, which was not actually pulled into yard for loading until September 14th. Corrected detention begins [fol. 1004] at placement for loading on that date at 10 o'clock. Closing detention on the Indiana Harbor Belt was not checked. The demurrage record for consignor shows 1 credit.

The next car is Pennsylvania No. 334185, moving in a two-line haul from Hubbard Steel Foundry Company on the Pennsylvania to Wisconsin Steel Company on the Chicago & North Western. The Pennsylvania started detention on September 2d at 6 P. M., which we changed to September 14th at 9 A. M. This car was made empty by an industry in the East Chicago district and moved to yard on September 2d. The carrier began detention on September 2d. (Tr. 1630.) But the empty car moved to consignor from East Chicago yard on the 14th, and corrected detention begins with movement from the yard to the industry. (Tr. 1630-1631.) The North Western ended detention of this car September 22d at 11 P. M., which we changed to September 21st at 12 o'clock noon. The loaded car was received at the industry on September 18th, placed under demurrage on the 20th, released on the 21st, reloaded on that day, and moved from Deering to 40th Street on the 21st. Corrected detention ends at estimated time that unloading of inbound car was completed. Demurrage record shows consignor 1 credit and consignee 1 credit.

The next car is Chicago, Indianapolis & Louisville, moving two-line haul from Brownell Improvement Company on the Baltimore & Ohio Chicago Terminal, to Rockwell Lime Company on the Belt Railway. The Baltimore & Ohio Chicago Terminal began detention September 5th at 5 P. M., which we changed to September 9th at 6 A. M. The carrier began detention date empty car was received from

the Rock Island at Burr Oak, which moved from Burr Oak to Blue Island on the 6th and from Blue Island to the industry on the 7th, being placed under demurrage on the 10th. Corrected detention begins on the 9th (Tr. 1631), one [fol. 1005] day prior to placement under demurrage.

In the preliminary part of my statement I make certain comments pertaining to this kind of movement where detention started at base yard at time of general movement or supply of cars towards industry without definite assignment, cars being placed upon some sidetrack or industry track several days in advance of actual spotting for load and placement under demurrage.

As to the Brownell Improvement Company, we found that the Baltimore & Ohio Chicago Terminal moves a string of cars into that industry, or somewhere in the neighborhood, which are moved there for prospective loading, as near as the records show. The cars are not placed under demurrage until some time later, which is the reason we have changed the time on this car. Closing detention as signed by the Belt was the 15th at 11 A. M., which we changed to the 14th at 9 P. M. Carrier fixed closing detention at interchange of empty car to the Chicago & Illinois Western at Hawthorne. Corrected detention ends at arrival at 22d Street yard. Demurrage record shows consignor 1 credit and consignee 1 credit. (Tr. 1632.)

The particular cars we have shown were simply picked so that they would illustrate the various methods which we applied in making corrections. There was not any uniform attempt that I know of on the part of the railroads to include in the exhibit they prepared, showing cost of car detention, the entire time the car was in the yard idle, as a part of the switching service or cost, even though the car may have reached Chicago in road haul service and thereafter made empty and placed in the yard. (Tr. 1633.) We have found in many instances that time has been included on cars which we thought was prior to the actual assignment of the car to a particular movement. In some in [fol. 1006] stances the cars arrived from road haul movement. In some the cars owned by a particular originating railroad were being returned by some other carrier from some other kind of movement. We did not investigate to find out just what that previous movement was, but we did trace these cars back to a certain extent so we knew some

thing about the previous movement. We found cars coming in from some kind of movement where carriers included the time from and after interchange time. The first car in the list was just an illustration, where the car was being returned home and its time was started immediately upon the interchange.

Examiner Faul: I think the exhibit will speak for itself, unless the witness has some special comment to make. (Tr. 1634.)

The Witness: I have no other special comment.

Examination by Examiner Faul:

We did not have time to go over or attempt to reconcile all of our differences with the carriers. We did take time on one of the roads to sit down and go over each individual car with that road, which was the Chicago & North Western Railway. When we finished the details with that road we felt that the changes we had made and we made some, based on our conference were rather minor in their nature, and we did not feel that we were warranted to take the time to go over all the rest of them; but we did go over all of the details with the North Western. The checking with the North Western grew out of the joint conferences we had. Of course various of these meetings dealt with individual carriers. (Tr. 1635.)

Direct examination.

By Mr. Slater (continued):

Statement 15 shows entire freight operating revenues, [fol. 1007] freight train car repairs, freight train car depreciation, freight train car retirements, total freight operating expenses, and the operating expenses and the operating ratio for carriers included in the cost study, together with Baltimore & Ohio and the New York Central, which were included in one of the carriers' exhibits for the year ended December 31, 1926. These figures have been summarized from the annual reports on file with the Illinois Commerce Commission and are included for convenient reference. (Tr. 1636.) This report in the main covers car detention. We have inserted on one page, comments concerning routing of cars which have to do with the company's so-called indexes. It is the page numbered

Roman VI. In the conference, we discussed various items concerning the routing in the preparation of the element cost. We have not summarized the results of the checks that we made of the movements of the 1,000 cars because time was not sufficient to complete this undertaking in a satisfactory manner; (Tr. 1636.) and on a considerable part of these 1,000 cars we do not have the complete information.

Mr. Davis: Mr. Examiner, I would like the privilege of cross examining Mr. Tholan tomorrow morning.

Mr. Slater: Mr. Tholan will be here in the morning if the case is not concluded today. (Tr. 1637.)

E. F. Saur recalled in behalf of respondents.

Direct examination.

By Mr. Davis:

In the various joint conferences we have held, there has appeared to me that there was a misapprehension as to what was involved in the term "car record". Each railroad in its terminal operation makes such record as it feels to be necessary to meet its own requirements. Most railroads maintain within terminal limits, a car record, a book or series of books in which is recorded (Tr. 1638), the [fol. 1008] date, the initial and number of every car, going into various degrees of refinement; the simplest record being that of cars in and out of terminals in road trains and to and from connections. The most refined car record maintained is one that not only includes that information but which records details if internal movement within the terminal limits either to or from different stations or yards. These book records must be made from underlying statements, either what has been referred to as a train sheet, sometimes called a wheel report or switch list; some roads maintain what they call conductors switching list and every road must maintain a record of cars interchanged with other railroads. Other records are necessary in connection with demurrage. All of these may properly be called car records, but confusion arises unless a particular kind of car record is specified in any designation. (Tr. 1639.)

The formula itself provides in assigning elements of service to specific cars the count would begin at time of the assignment of the car to the particular service and shall end fundamentally when the car is released from service. With 15 different railroads involved in the cost study, each maintaining car records of various degrees of completeness, it was very difficult to try to lay down any hard and fast rules. (Tr. 1639-1640.) And in proportion to that difficulty effort was increased to make perfectly clear the fundamental principles involved. All instructions tended to setting up records in such shape that when later the elements of service were applied to specific cars that the proper elements could be assigned no more and no less. Even with the most complete car records there are a number of service units not correctly recorded so that a cost study dealing with various unit costs of service could not be developed without a special study. For that purpose a blank form was designed which was recorded by every [fol. 1009] conductor on every engine trick during the cost study period, showing exactly how he disposed of his time, and the number of cars handled with respect to the various elements and sub-elements of service. It was necessary in the study to develop whether or not a car was reloaded after having been made empty at an industry or whether it was furnished from a base yard or from a connecting yard. (Tr. 1640.) It was necessary to obtain information as to whether the car when released from the industry was reloaded or taken to a base yard and returned to a connecting line or a classification yard. The cost study committee was composed of men experienced in the accounting departments and the operating departments. Where a member of the committee was an operating man insofar as necessary he used his own personal knowledge of the regular or normal routing of cars. Where the cost study committee member was an accounting man, in varying degrees he obtained such records as he could from the car records but even with those car records, it was necessary for him to depend on the knowledge of an operating man in order to have a complete record of units of service involved in the different movements. (Tr. 1641.) The operation of a freight yard cannot be compared with the operation of a

passenger train schedule. There must be flexibility of operation in the handling of cars in terminals, due to varying volumes of traffic, offered for handling. Regular assignments are provided as far as is practical and wherever the knowledge of an operating man was necessary in setting up these indexes (Tr. 1641.) the effort was directed always toward the normal movement furnished in the handling of cars, in this service. (Tr. 1642.) It is the function of a yard master to regulate the number of engines employed either by increasing or decreasing, to permit proper and prompt handling of the traffic; so that any yard master in his district, or any train master, must know [fol. 1010] the normal or natural movement given to any car. (Tr. 1642.) We found in checking some Pennsylvania records—the special forms that were made by conductors—that on 5 days out of 6 a movement was made in a certain way, but on the 6th, made in a different way. But generally speaking, the fundamental principle involved whether the cost study committee member was from the accounting department or the operating department. The fundamental principle applied was that of assigning each index number the proper units of service. (Tr. 1642.)

A base yard, Mr. Slater, must be a classification yard but all classification yards are not necessarily base yards. A base yard is generally one of sufficient size so that certain assignment of engine crews make that their basis of operations. It is really a general yard in which they perform all kinds of service, classification, storage, etc.; of service. They are sometimes referred to as key yards. They are the home base for a various number of engine tricks and are equipped with repair yards and storage yards for all purposes. Wherever the classification yard may apply to a small one where only classification service is performed, which is frequently referred to as an auxiliary yard. (Tr. 1643.)

Ray Hurd was sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am chief clerk to general superintendent of the Belt Railway of Chicago. (Tr. 1644). Have been in attendance

at the hearings in this case and was one of the cost study committee of the carriers of which Mr. Saur was our chairman. For the Belt Railway in preparing the cost study, I made the assignments of the elements of service those [fol. 1011] cars should have on the Belt Railway and those assignments for the period involved in the cost study were correct. Since May 15 I have made a subsequent study. (Tr. 1645.) After the hearing last May, we took our records and made an actual check of the movement of the cars over our line and compared it with our setup, showing our original set up was 94% correct, which shows that 278 cars out of the 4890, moved differently from the way we had set them up. In making the change resulting from that check, it resulted in our cost study overstating the costs thirty eight dollars and some cents. The total amount of money involved on the Belt being $27,000.00. The overstatement was $38.15. (Tr. 1646.)

We took the number of cars and went to the various stations and ran the cars from our own records and brought them back to the office comparing them with the way they were set up in the cost study and where there was an undercharge, it was listed as well as any over charge. (Tr. 1647.)

Cross-examination.

By Mr. Tholan:

In this rechecking of the cars in the cost study so far as the Belt was concerned, we checked both the 1, 2, and 3 line hauls and the total over statement was the net for all 3. I am not sure that I have the figures separately for 1 line, 2 line and 3 line hauls. The cost study of cars on the Belt for the test period as shown, showed a percentage of error of 6.09 per cent (Tr. 1649) and if all movements in the exhibit are corrected to that extent, it makes the slight difference in money that I stated. Taking a movement from the Illinois Steel Co., via Chicago, Milwaukee & St. Paul to Athey Co., at Clearing, the check in that instance would be from the checkout record from South Chicago. I do not think we have a record showing that car classi [fol. 1012] fied at 22nd St., and our check was not complete as to all the movements in the cost study. The outcards show the classification of that car on the Eastbound hump

at Clearing. The out-cards you could find in the Superintendent's office at Clearing, which show that car going over the hump. (Tr. 1650.) The conductors report shows the transfer of that car from the West yard to the low line. That record is available at the agent's office. I will bring the record of that car, Chicago, Milwaukee & St. Paul No. 305,276, index 586, here tomorrow. There is probably no absolute record from which you could check the classification of that car at the West yard flat. (Tr. 1651.) Index No. 425-A covering car moving from the Chicago By-Products Coke Corporation to the Austin Coal & Coke Co., classification at 22nd St., the records at 22nd St., would show that. The records would show the train was switched. The records there might show the train coming into the yard on such and such a track and then the yard engine goes and switches the car on that track for the various destinations. The record shows that this particular car arrived on a particular track, was classified and left. I will try to bring the records here tomorrow showing the movement of this car (Tr. 1652), but those will be back in 1926, I may have some trouble in getting them, but will do what I can. The classification at Hawthorne was shown from the same sort of record. There cannot be a record showing the car was actually classified with this exception. A car arrives at Hawthorne on track No. 8 for a certain destination. The train arriving on that track will have cars for half a dozen or a dozen different destinations; (Tr. 1653.) A yard en- [fol. 1013] gine goes in there and breaks up that train and of necessity he has to switch the cars. (Tr. 1653.) In a case like that I concluded that all these classifications were made rather than checking them from an actual record. We would not have a record showing each one of the small movements from one track to another one in the yard. As to the reclassification of the car at the same point, the cars leaving Hawthorne for the industries will arrive on track 8 and the yard engine comes in switches the cars for the Burlington on 1 track, for the Chicago & Alton on another and for the Soo line on another and the cars for Hawthorne industries on another. I am trying to tell you how I would know what happened but we do not have a record that would show the actual classification of a car from an inbound transfer train to a certain track in the yard; there is no such record. As to the classification at Cragin, my

answer would be the same that we have no actual record from which could be determined that the car was classified, not as to the actual track or by what train, and as to reclassification at the same station, it would go through the same process. You would not have a record of the individual cars in the train as they are broken up from that train to the various tracks in the yard, except your checkout record. There is no record from which you could check these other items, particularly classification of the car or from which you could determine that each of these cars were reclassified the number of times indicated in the cost study except that the record will show the car arriving in a train in a yard on one track will leave in a train from that yard on another track. (Tr. 1655.) There were some unusual costs on our railroad that we did not use because they would not represent a normal movement. Very often perhaps, every day, we make movements for operating reasons for the convenience of the shipper or other similar [fol. 1014] reasons that will be out of line but normally 90 per cent of the business will move in certain or regulated channels. As to unusual movements I have in mind one or two during the study period between South Chicago and Lemoyne and South Chicago and Hawthorne, handling individual cars. That is not a normal movement and we have no place at Hawthorne (Tr. 1656.) to take care of a train except on a main line which means the train has to stop South of Hawthorne, set the car out on the canal track then couple on the train and go ahead. Afterwards the yard engine is sent out of Hawthorne to the Canal track to get the car which will result in the cost of anywhere from $8.00 to $16.00 or $17.00 per car. We go from the level to elevated tracks at Hawthorne and if the train is stopped there, they cannot make the grade. We did not use a number of short runs over various portions of our lines to build up a through movement over the territory. The reason is that the normal movement of the bulk of the traffic would be in a direct train. Some trains out of South Chicago will leave there with cars for 22nd St., and Cragin and sometimes will get cars for the Northwestern (Tr. 1657.) or the Milwaukee. Then you would have a transfer to 22nd St., 22nd St., to Cragin, but the bulk of the traffic will move direct from South Chicago to Cragin. So it

is proper to use the normal movement which would be less than the combination. (Tr. 1658.) That is the only reason for using the through movement. The transfer elements from station to station included the time of starting the train and time of coming to the first stop and setting off some cars. (Tr. 1658.) In the using of the combination movement you would be charging the through car with the transfer move belonging to a local car and that is one reason why we would not use the combination of local movements. (Tr. 1658-1659.) Where we had 10 or 15 cars [fol. 1015] moving between the same two industries, I did not look at each individual car to see where to check the start of the movement and the detention on each car. I checked merely the physical movement of the car. In the check where I found about 6 per cent. error, was a check of the physical movement of the car only. There was no car detention in it. If there were 15 cars moving between the same two industries our car accountant checked the cars from his records for car detention; and the agent's records and the demurrage records. Each individual car was checked on form C. S.-6-A. We started the time from the time of the assignment. (Tr. 1659.) We were instructed to start car detention at the time the car was assigned to that particular loading and it may be, of course, that we made some errors; we probably did. But am certain that was the practice followed; We did not figure from the time the car was actually placed, but from the time assigned. That is, from the time the car order clerk instructed the operating force to pick up a car for this industry for certain loading. Well that car was taken out of the regular channel and diverted to that industry. (Tr. 1660.) In accounting for the number of cars on the Belt Railway upon which detention time was figured from the time the car was empty or received at the interchange yard as stated by Mr. Tholan, the time as I mentioned a moment ago, we included in our detention time beginning with the time of assignment until the car was returned to its normal flow of traffic.

Cross-examination.

By Mr. Walter:

In my check I did nothing more than determine that the car moved through the yard as originally charged; that

is all; the physical movement of the car through the yard. And then finding the car in the various yards on the road I assumed that it had certain classifications in handling in [fol. 1016] those yards for which I made the charge as stated in my exhibit. There is nothing in any record now existing to show anything more than its presence in the yard; we can only show that a train of cars will arrive in a certain yard on a certain track and a few hours later those cars will leave that yard from another track (Tr. 1661), so that somewhere in that process the cars had to be switched from here to there, from one place to the other and we treat each car as a unit regardless of the number that might be going to and from the same industry.

Recross-examination.

By Mr. Slater:

As to a car arriving at an industry under load and reloaded, the cost would start with the car at the industry. In other words there would be a reload and no cost in our elements of getting the car to the industry. (Tr. 1662.)

G. F. Vivian, recalled, testified as follows:

Cross-examination.

By Mr. Walter:

In my exhibit 7-A showing rates under the Lowrey basis and over the Lowrey basis, cinders are found in commodity group 69. (Tr. 1663.) Scrap iron and coal tar are in group 69; ammoniacal liquor, group 66; slag, group 69, and refuse and ashes, I presume would be under the same group number. Railway cars on their own wheels are not in this statement. I determined between state and interstate by the usual methods used by carriers in preparing intra state and interstate statistics, and in that you follow the actual route of movement. (Tr. 1664.) If a yard is located on the State line, whether the movement in the yard would be state or interstate depends on where the car came from and will go to. If it went out of one end of

the yard into the other state and then went back into the [fol. 1017] state of origin, then it be an interstate movement and that would be determined from the route the car followed. We have records available that would enable you to determine whether a car went in at one end of a yard and out at the other or whether out at the end at which it came in. (Tr. 1665.) All the data that comprises the underlying basis for these exhibits are marked in accordance with that method. Benzol and Toluol are in group 66. (Tr. 1665-1666.) In Exhibit 7-A where we show the rates below and above the Lowrey basis, we have data showing origin and destination and routes of the particular movements. In fact, we have 14,000 pages underlying this set of exhibits and we have in the neighborhood of 42,000 individual slips covering each particular car and its movement. On sheet one of Exhibit 7-A where we show one car of flour and meal with the present and proposed rates and 24 cars of other milled products, our working papers segregate these movements under particular rates and as to any tariff item you desire to investigate our records would show all cars moving under a particular rate and before it was finally merged into the completed exhibit. (Tr. 1666.)

E. F. Rummell, recalled, testified as follows:

Cross-examination.

By Mr. Walter:

In my previous testimony dealing with the repairs to cars, I used the word 'damage' as indicating cars damaged in movements and as meaning that the car or a part of it, some part of it, was broken. It would include possibly some worn parts that could not be detected by the usual inspection. (Tr. 1667.) My testimony was to the effect of the car being damaged in the yard or on the road, and that more damage was done in the terminals than on the road. My testimony was directed to broken parts of a car in the [fol. 1018] usual handling in the yard or on the road and had no reference to the general work which is necessary to put a car in shape; no general repair work. (Tr. 1668.) The facilities for general repairs exist at these terminals

to a much greater degree than they do on the road, and when cars damaged through rough handling, collision, etc., are repaired, we then repair whatever is needed on the car and put it in shape. I only testified to the number of cars that were damaged on the road and in the yard. (Tr. 1669.) I did not testify that 1026 cars were repaired in the Southern district in 1928, and that the total expended on those cars for labor and material was $35.50 per car. (Tr. 1670.) I gave the total number of cars that were damaged for six months in 1928, being 1026 in the yard and on the division there were 126. (Tr. 1671.) The car would not go on the rip track unless it required repairs, but once there all damage that might have occurred on the road or in the yard was included in the $35.50; all that was done to it was included. (Tr. 1672.) We show 1026 in number damaged in the Chicago Terminal in that period; they were damaged in the terminal as shown by the inspection reports. The inspection reports do not show in all cases that they were merely found in a damaged condition. (Tr. 1672.) We know they were damaged in the terminal because we have the record to show where they were damaged. Sometimes the record shows more than that they were found in a damaged condition. That is not necessarily a very unusual situation. Cars are usually inspected as soon as the train arrives, and inspected before they leave the track of the terminal. They are inspected coming into the terminal and record made of the damaged condition or need of repairs, and before they go out they are examined and if any are found to be in a damaged condition or need of repairs they are repaired before they [fol. 1019] leave the terminal. (Tr. 1673-1674.) In addition to these two inspections we have had, at certain yards, inspection after the car is placed at the freight house. It all depends on where the yard forces are located. We have such inspection in Chicago at the Galewood freight house and at Union Street. I do not know of other places, offhand. We have about 10 yards in Chicago where trains either arrive at or depart from, and that inspection is put down in the report. (Tr. 1674.)

If the report shows the car is safe to run—that is, that there is no penalty defect, it is repaired at the next repair track. (Tr. 1675.) If it is not safe to run the car is set out of the train and put on the repair track. If it

is a safety defect it is not permitted to go out of the terminal. But if it is not such a defect, a broken board say, there are times when they are repaired right on the track, if there is time enough to do it, and if he cannot, it goes out and is repaired at the next repair track. (Tr. 1675.) If it is just a broken board and it is not going to damage the commodity in the car or interfere with its operation, it is liable to go to the end of the division or three or four divisions. (Tr. 1676). That is not true of any similar defect that does not impair the use of the car for the particular lading or endanger the safety of the men operating the train. We do not allow our cars to run around promiscuously that way on the railroad. Our rule is to see that the cars are repaired, and in the testimony I gave, a car loaded will be a car in perfect condition or it would not load. We make an effort to have cars fit for grain loading. (Tr. 1676.)

The damage occurs in all services. More cars are damaged in classification service than in transfer service. Most of the smaller damages occur in classification. As to the [fol. 1020] heavier damages, the place where they occur depends on how the damage happens. I would say in the classification yards, on the leads, is practically where the damages occur. The damages aside from ordinary wear and tear occur in the classification yards on the leads, and in transfers. (Tr. 1677.) The transfer service in some of the yards is more likely to cause damage than the road haul movement from division to division. (Tr. 1677 1678.) Speaking generally, it is, because we are handling big trains and probably a string of cars without air coupled in, and the rough handling and stopping is what accounts for that. We can handle in the yards without the air being coupled up, and we have yards that are a mile long. Transfer movements from yard to yard is all yard movement within the terminal. I did not say that between our yards here in Chicago we can move from one to another without coupling up the air. (Tr. 1678.)

Transfer service is service from one yard to another, and whether we couple up the air depends upon where we are going or where we came from. Take our Bensenville yard, from the east end to the west end about a mile or two long, as an instance where the law does not require us to couple up the air. When we move from our outer yard to our downtown yard, the air is coupled up, and that

is practically the same sort of a movement as a road-haul movement, and the resulting damage to the cars in that movement is practically the same as in a road-haul movement. (Tr. 1679.) There is a vast difference between spotting and pulling the cars at an industry here and at an industry out on the road. We have to perform the service here much faster than out on the road; we handle more cars with a switch engine in the yard than out on the road, and the cars receive more handling from an industry track than they would receive on the road. In [fol. 1021] handling two cars to an industry on the road the train pulls up with a train crew, trained in the same manner as our yard switching crew (Tr. 1680-1681), and I think the road crews are as proficient and as efficient and that the equipment they use is just as efficient in the road-haul service as it is in the switching service. Working in the yards in switching cars and working on the road switching cars are two vastly different things. Usually on the road they handle a few cars with the engine shoving in and pulling out; probably they shove in with the air coupled. In the yard the switching is entirely different. You probably have 30 or 35 cars in one cut, and you will shunt back and forth switching to the different tracks. I am not talking about classification. (Tr. 1681.) You do not always break up a train to set out two cars to an industry. The train may be in station order, and we make it a practice to do that. Where we put two cars on an industry track the air is usually coupled up if they are switched out of the train and we have to switch the cars out to put them on an industry track, and whether we pull the two cars off the head end of or at the rear of the train depends on what the situation is. If you mention some concrete situation I probably can explain it to you better. (Tr. 1682.)

Taking train movement from Chicago to Milwaukee with cars to set out at the first station, if the cars are between the rear and head ends air will be coupled up; if they are going to shove them on the sidetrack the air is coupled up, then he brakes his air, away he goes, and the air is set. If he goes in with the engine on the sidetrack to pick up the cars, the air is not coupled; that is, sometimes they will couple up the air and other times they will not. Generally speaking, in switching in the yards and placing cars

[fol. 1022] on the industry track the air is not coupled. In shoving 2 cars to an industry track in the district, whether air would be coupled or uncoupled depends on the situation, whether or not there are other cars on the track. If there are no other cars on the track, all you have to do is to cut off the cars from the train and shove them onto the industry track, spot them and perhaps make the door where the shipper wants the car spotted, the first time, and maybe not. You move them back and forth. (Tr. 1683.) A man handling with air is in a better position to spot the car than a man without the air coupled in.

Mr. Walter: All right, but he does it sometimes with the air on and sometimes with the air off, both places, does he not?

The Witness: No, not in an industry—that is, not in the terminal, it is not the general practice.

We do not have a hump in our yards. I am not prepared to say whether there is more likelihood of damage in a flat yard than in a hump yard (Tr. 1684), but it would depend on how the hump is equipped. I have not worked with a hump that was efficiently equipped, so cannot answer your question. Our company had two hump yards in Chicago, but our hump at the time could not be considered with the ones they have in some of the yards in the Chicago terminal now. We had no retarders or anything of that kind. We abandoned ours because we could switch more cars on the flat. We had a better lead. We could shove them in faster. (Tr. 1685.) We had a good gravity yard and a good lead to work on, and we could switch more cars on the flat than we could over the hump, and as the result of that experience we gave up the hump, and we could do it cheaper also. We handle about 7500 cars per day in Chicago, and during the period covered by the 1026 cars, while I do not have the exact figures handled each month, would say we averaged between 7000 and 7500 cars per [fol. 1023] day, I mean to say. (Tr. 1686.) Anyway, I would say 7500 cars per day is a minimum for the Milwaukee to handle in Chicago; our maximum has been about 8200. (Tr. 1687.)

Chairman Campbell: Are we ready for Mr. Oliver's statement now, or is that all of the cross-examination that you have reserved?

Mr. Walter: Yes.

Mr. Davis: He has waived his cross-examination of Mr. Saur, as I understand it.

Mr. Walter: I think we will save time by putting Mr. Oliver on in the morning. (Tr. 1688.)

C. W. Galligan, recalled, testified as follows:

Direct examination.

By Mr. Davis:

Have carefully checked and analyzed Exhibit 89 filed by Mr. J. S. Brown of the Chicago Board of Trade, purporting to set forth switching rates applicable in switching districts of St. Paul-Minneapolis, Omaha, Council Bluffs, Kansas City, Peoria, and St. Louis. (Tr. 1688.) The illustrations in this exhibit should be subdivided: first, road haul; second, to and or from connections in the district; and third, intradistrict single line.

The section designated by me as 1 (road-haul rates) embraces approximately 30 per cent of the exhibit, and these charges are universally absorbed by the line enjoying the in- or outbound haul, and such rates presently in effect in the Chicago district are not involved in this proceeding. (Tr. 1689.) This absorption enables the carriers with their line-haul traffic to reach industries on connecting lines. [fol. 1024] This reciprocal arrangement making available the use of connecting lines' terminals is a mere matter of bookkeeping as between the roads entering into the arrangements; and the rates covering, which are much in the nature of divisions and have always been made without any regard to the cost or value of the service, on the theory that what is done by one railroad for another is offset in transactions of this nature. The extension of terminal facilities by transportation companies through the medium of reciprocal arrangements is entirely dissimilar from a proposition involving a local movement between points in a switching district for the public. (Tr. 1689.)

Section 2, intradistrict switching, as designated by me, embraces approximately 30 per cent or more of this exhibit, and to the extent it purports to show those charges in the towns mentioned, is defective, as in each instance it shows

but part of the total charge applicable to the intradistrict movement. Such charges in Mr. Brown's exhibit are merely the portion of the through charge accruing to the road whose charges are shown on a movement between a location on one road and a location on another line within the same district. (Tr. 1690.) No mileages are shown for any part of the entire intradistrict movement.

Page 2 of the exhibit shows charges of the Chicago & Alton at Kansas City, Missouri, published in its tariff I. C. C. A 1676. Item 1 shows intradistrict rate of $8.10 per car, applicable on grain and grain products received from connecting lines, destined to elevators or mills, except when from the St. Louis-San Francisco Railway, where the charge is $6.30 per car on grain and $4.95 per car on grain products. To these charges must be added those of the originating line handling the car up to its connection with [fol. 1025] the Chicago & Alton. Page 1 of the exhibit shows charges of the Santa Fe at Kansas City, and if the car originated at elevator "A" on that road, its charge up to its connection with the Chicago & Alton would be 2½ cents per hundred, minimum 80,000 pounds, or $28.10 per car. (Tr. 1691.)

On page 2 of the Exhibit under heading "Chicago & Alton", item 2 shows charge of that road for hauling grain from mills or elevators on its line to connections, (Tr. 1691) 2½c per 100 on grain, minimum weight 80,000 pounds on wheat, 60,000 on corn, and 40,000 pounds on barley, and a car moving from mill or elevator on this road to an elevator or industry on the Santa Fe must pay the charge of that road shown on page 1 of the exhibit to determine the correct total intra-district charge on this movement. (Tr. 1692.) Page 4 of the exhibit under heading, "Chicago, Burlington & Quincy", the last paragraph under subheading "Kansas City, Missouri", item 1 purports to show the charge of the Burlington between its connection with certain railroads in North Kansas City and industries in North Kansas City. This item is incorrect. It should show the charge set forth therein as that portion of the charge accruing to the Burlington on movement from a point on a connecting line at North Kansas City to an industry on the Burlington at North Kansas City. The charge according to the Burlington from an industry on its line at that point to a location on a connection at North Kansas City is

a graduated scale ranging from 2¢ per hundred minimum 60,000 to 5½¢ per hundred, minimum 20,000 pounds. (Tr. 1692.) See page 64, Chicago, Burlington & Quincy, Tariff I. C. C., 15, 625. These charges just referred to must be added to those of the connecting line for handling the car from its connection with the Burlington to final destination in the switching limits of Kansas City, Missouri-Kansas. The same exception applies to items 2 and 3 of *of* this [fol. 1026] paragraph. The charges shown represent the Burlington's charge for moving cars from connection to destinations or industries on its line at Kansas City and on cars moving in the opposite direction the graduated scale previously referred to applies. Item 4 correctly states the charges but they represent only that portion of the charge accruing to the Burlington in connection with a movement intra-district and another charge beyond the Burlington must be added, (Tr. 1693) to obtain the total charge for the intra district haul. A typical movement would be a car of grain from an industry on the Burlington at North Kansas City to a location on the Wabash at that point on which total charge would be $20.00 per car, made up of 2¢ per hundred, minimum 60,000 pounds or $12.00 per car to the Burlington and 2¢ per hundred minimum 40,000 pounds or $8.00 to the Wabash Railway. (Tr. 1694.)

On page 4 the first item purports to be switching charges of the Burlington at Council Bluffs, Iowa, the first paragraph of this item shows intradistrict charges as $3.15 per car. It applies between connecting lines and industries but the charge represents only that portion accruing to the Burlington for an intra district movement. (Tr. 1694.) There must be added another charge for the handling of the car by another line up to the connection with the Burlington. This charge is not correctly stated as the item carries a provision for a minimum through charge of $6.30 per car.

Mr. J. S. Brown: Where there is a minimum charge of $6.30, that would be for the total movement and not for the Burlington charge, would it not? (Tr. 1695.)

The Witness (continuing): If you had listened to me Mr. Brown you would not have had to interrupt, there is that very statement in my statement which says 'as the [fol. 1027] item carries a provision for a minimum through charge of $6.30 per car.'

The charge of the Burlington between industries is 2c per 100 on all commodities except coal, on which the charge is 24c per net ton, minimum $9.00 per car. (Tr. 1696.) The second item of this paragraph sets forth charge of the Burlington for hauling grain between elevators served by First Avenue River track of 1½c per 100 minimum $6.30 per car and on a 60,000 pound car the charge would be $9.00, the maximum haul on this track being one-half mile and the minimum, a few hundred feet. The second item on this page shows switching charges at Omaha, Nebraska. I understand the Omaha switching district is subdivided into rate districts and the charge varies according to district. The intradistrict charge shown is for that portion of the haul on the Burlington. (Tr. 1696.) And there still would be an additional charge for the carrier handling the car to its connection with the Burlington. The Omaha district hauls are short, ranging from 1 mile to a maximum of 5 or 6. Referring to page 18, setting forth rates published in agent Boyd's tariff, I. C. C., A-1886, applicable in the St. Joseph switching district, the first item is incorrectly stated. The $4.50 per car charge shown for the Union Terminal Railway applies only on grain for mixing, blending and milling; on other grain the charge is $6.30 per car. (Tr. 1697.) The second item covers reciprocal switching rates which are absorbed by the road haul carrier. For industrial or cross town switching, a graduated scale applies ranging from 2c per hundred, minimum 60,000 pounds on Class "E" articles to 5½c minimum 24,000 pounds on articles rated fourth class or higher; being the charges accruing to the originating line, to which should be added the charge of the delivering line. The maximum distance in cross town switching at St. Joseph is not in excess of 4 miles and the minimum about a quarter of [fol. 1028] a mile. (Tr. 1697.) Page 15 sets forth switching charges of the Northern Pacific at Minneapolis, their tariff I. C. C., 8391, the first item on this page being incorrectly stated. Intradistrict charge is shown as $3.15 per car but the charge now in effect is $8.10 per car shown in Northern Pacific Tariff, I. C. C., 8447, effective January 10, 1928. The road haul rate is correctly shown but that charge is absorbed by the road haul carrier. (Tr. 1698.) The second item is a reciprocal charge. The 3rd, 4th and 5th items are correctly stated as to intra district rates, but these

rates apply for the portion of the haul of the Northern Pacific, to which must be added the additional charge of another line handling the traffic to or from its connection with the Northern Pacific, These rates are admittedly low but are for extremely short hauls and the carriers operating these rates advise that they by no means represent the cost of the service. (Tr. 1698.) Pages 19, 20, 21 and 22 of this exhibit show charges of the Terminal Railroad Association of St. Louis in its Tariff I. C. C., 131. The items on page 19 apply from and/or to connections of the terminal railroad and connections with other railroads in St. Louis, Missouri, representing only a portion of the total charge for the through movement, and the charge up to and beyond the connection of the terminal by other lines, in order to complete the haul, must be added to determine the total charge for the through movement. The first item on page 20 sets forth only a part of the total charge for the through movement. The 2nd item is correctly stated. The 3rd applies only on Illinois State traffic subject to a minimum of $6.30 per car; the 4th applies on Illinois State Traffic and subject to the same minimum charge; the 5th item is correct but a portion of it applies to traffic moving between elevators and mills in St. Louis and elevators and mills in East St. Louis, which crosses the river on one of [fol. 1029] the bridges, and it is not proper to describe these as switching rates. (Tr. 1699.) The balance of the item applies between connections of the terminal at St. Louis and track connections of that company in East St. Louis, and is an intermediate charge for the service of the terminal. Additional charges beyond its local connections in East St. Louis must be added to determine total charge for the through movement. The 6th, 7th and 8th items on this page refer to absorption of switching charges on local movements within the East St. Louis-St. Louis districts. The items on page 21 are correctly stated but impossible to analyze because of the complicated or confused manner in which the rates the set forth. The 3 items on page 22 are also proportional rates applicable from, to or between connections of roads stated and to determine total charge, additional charge from or to connections of roads named must be added. On page 17, the heading "Peoria-Pekin

districts'' is misleading. It might create the impression that these charges apply for movements between industries at Peoria and industries at Pekin but the rates do not so apply. The Peoria switching district and Pekin switching district, (Tr. 1700.) are separate and distinct switching districts. (Tr. 1700.) For movements between Peoria and Pekin, road haul charges of the Peoria and Pekin Union Railway or the Peoria Railway Terminal are assessed. The charges shown in first item apply only to movements either wholly within Peoria or wholly within the Pekin district and not between Peoria and Pekin. In the second item on this page, are switching charges accruing on road haul traffic having origin or destination outside of Peoria or Pekin district. And these charges are absorbed by road haul carriers. In the 3rd item on this page the charges represent only a portion of the total charge for the service. The $4.00 charge shown in the [fol. 1030] last item on this page is in the nature of a transit charge on grain handled into and out of Peoria by the Rock Island. The distances cars are handled in the Peoria and Pekin switching districts range from approximately 200 feet to 3 miles, with the exception of the movement to the American Milling Company, where the distance is about 4 miles. The 3rd section into which this exhibit has been divided by me refers to intradistrict single line rates and but few of these rates are in the exhibit. On page 2 is the rate of the Chicago & Alton Tariff, I. C. C., A-1676. (Tr. 1701.) grain from the Alton elevator or the Kansas elevator to the Zenith Milling Co., is $6.30 per car. The distance in the first instance being .34 of a mile and in the second, 2.8 miles. This rate is low and I assume was made for the reason that the Alton road can expect another haul on traffic moving from the Zenith Milling Co. On page 3 is the rate of the Chicago and Northwestern Railway at Council Bluffs, Iowa, for a movement between elevators on the First Avenue River track of 1½¢ per hundred, minimum $6.30 per car. As most of this traffic loads 80,000 pounds or over per car charges would be around $9.00 or $10.00 for a haul approximating one half mile. A similar item on page 4 applies to the Burlington for a similar movement. Another item on page 16 applies on the Wabash Railway at Council Bluffs with a rate of 2¢ per hundred, minimum $8.10 per car for single line haul. A similar

item on same page applies under sub-heading "Omaha" and another on the same page under the heading "St. Louis and the East St. Louis" where the charge of $15.00 per car is shown for single line haul between industries on the Wabash. (Tr. 1702.)

The conditions at the points shown in the Exhibit and in the Chicago district are not similar. (Tr. 1703.) There is no switching district in the United States where conditions are similar or substantially similar to those in Chi- [fol. 1031] cago where the Chicago Terminal switching district covers an area of some 600 square miles with over 5,000 miles of steam railroad track in which 27 trunk lines and switching railroads operate to serve over 4,000 private industries in addition to numerous team tracks and freight houses and where the minimum haul on grain is 1 10 of a mile and the maximum 53.16 miles, the average haul being 15.32 miles on grain in Chicago. (Tr. 1704.) We took these mileages from Exhibit 11 A.

Cross-examination.

By Mr. J. S. Brown:

As to the rates I said were incorrectly stated, in each instance, I stated the correct one. Because you did not join two rates together I did not say they were not correctly stated. I did not make that statement as to these rates from a connection. Where I said the rate was incorrectly stated, I refer specifically to the figures. One of them was in Minneapolis where you had an incorrect figure and another in some other city where you had $3.15 or something of that sort and with these two exceptions, as far as I was able to check the rates are correctly stated in your exhibit. I did not check every rate in the exhibit, of course. I checked the exhibit to some extent but did not check all the things I have mentioned in my statement here. (Tr. 1706-1707.) Taking a 2 line haul on grain in the Chicago district, I said your exhibit was not clear. That is what I said, because it did not show the total charge for the through movement.

You could not take the tariff of any railroad in Chicago, stating a rate on that railroad from an elevator to a connecting line and from a connecting line to an elevator and hook it up and show what the through charge was unless

you had an actual movement; (Tr. 1707.) But if you wanted to show a representative rate, I would not show part of the movement and say that was the rate on grain [fol. 1032] in Chicago. I would show single line rates as such and if from a connection, would undertake to show what the through charge would be in order to make it clear that the charge you quoted was not the total charge but only for one part of the haul. I did not do that as to my Exhibit 85, because it is not that type of exhibit. Exhibit 85 shows the exceptions over and under the Lowrey basis. My Exhibit 85 shows each individual rate from a connecting line to an elevator and from an elevator to a connecting line. (Tr. 1708.)

No grain that moves in Chicago between elevators or between a mill and an elevator or between two mills or between two industries in Chicago is embraced in the Lowrey tariff. (Tr. 1708-1709.) On a movement of grain from the Northwestern elevator to another elevator in the South Chicago or the Calumet district to find the rate, I would look up the tariff and find it but I could not tell you what tariff it is in now; I do not have those tariffs before me. I would take the Northwestern tariff because it would be the initial line. I do not know how that charge would be stated by the Chicago and Northwestern but probably would show from Chicago and Northwestern elevator to its connecting lines. (Tr. 1710.)

Mr. Brown: Just as it is in Exhibit 89?

The Witness: But if I wanted it to indicate the switching charges on grain in Chicago, I would not just put down the Chicago & Northwestern charge from an elevator to a connection and say that was the charge on grain in Chicago.

Mr. Brown: Neither would I and I have not done that either in my exhibit.

The Witness: Well, it shows here it is the charge of the different railroads whose tariffs are shown here and what I stated was that it is incomplete in that it does not show [fol. 1033] the charge for the actual haul up to or beyond the connection of the road whose rates are named in this exhibit and that must be shown in order to determine what the total charge is for the movement in the Chicago district or any other district. Therefore, it cannot be used for comparative purposes. (Tr. 1710-1711.) Having

traced the Chicago and Northwestern movement from the Northwestern elevator to its connection either the Indiana Harbor Belt or the Belt Railroad, I do not know how I would find the charge stated for either of the latter roads for the service either might perform thereafter. I do not have the Belt Railway Tariffs before me. I do not know that the charge from the Belt Railway to the Belt elevator would be stated as so much per car. Possibly it would. It would be the proper manner of publishing it. The rates stated in my Exhibit 85 show from the connections in some cases.

Mr. Brown: And are they stated any differently than they are in my Exhibit 89?

The Witness: But that exhibit is not a comparison and it is not filed with the idea of showing a comparison of rates of these various towns with the rates in Chicago. To make such a comparison, you must have the total rates, the total charge.

You could get the total charge out of Exhibit 89, the same as out of my Exhibit 85, by digging around in there. Nobody is trying to dig that out of Exhibit 85 because it was not filed for that purpose. Exhibit 85 was not filed with the idea of showing the Commission that today certain railroads in Chicago are charging for their haul from a connecting line to an elevator or from an elevator to a connecting line and also between elevators on their railroads, certain amounts per car. (Tr. 1712.)

Mr. Brown: How could the Commission tell just what the rates would be out of your tariffs any more than they [fol. 1034] could tell them out of this if they did not know what the actual movement was?

Witness: If I was undertaking to put before the Commission what the rates are in the Chicago district on grain and for through movement, I would show it and not under the heading of one road in one tariff, show from a connection to an elevator and then leave it, producing the impression that that is the charge for handling grain in the Omaha or Council Bluffs or the Kansas City district. (Tr. 1713.) That is only a part of the haul. I did not say in speaking of the rates of the Santa Fe and Chicago & Alton at Kansas City that they were made without respect to the cost of service or profit to the carrier. But I did say that with respect to the rates in the St. Paul-Minne-

apolis district. I would not say that with respect to all of the per car rates. (Tr. 1714.)

I do not know whether the $28.10 per car charge on a movement between the Chicago & Alton cross town to the Santa Fe referred to by me would be absorbed by any road haul carrier getting that movement outbound. I do not know anything about the absorption. I am not dealing with the absorption on road haul traffic. My comparison there was for the purpose of showing what it would cost to handle a car of grain from an elevator or mill on the Chicago & Alton to a mill or elevator on the Santa Fe or the reverse of that haul. I mean by that not the cost but the charge the shipper would have to pay. (Tr. 1715.) I do not recall the number of the rates I said were incorrectly stated in your exhibit or where probably the item had not been completed. As I read them off, I stated where there were errors in your exhibit. (Tr. 1716.)

In reference to my comments on page 18, regarding mixture of products for reshipment at St. Joseph, I mentioned [fol. 1035] that to call attention to the fact that the charge in your exhibit applies on grain that is milled, etc., or in other words given transit while on other grain there is a higher charge. (Tr. 1716.)

I said the maximum haul in St. Joseph would be about 4 miles. I have been in St. Joseph, Missouri, and have been around quite a little there. I have seen them switch cars up the alleys and down the streets there, but they do that in quite a number of other places also. (Tr. 1717.) I said there was not any place in the United States where conditions were comparable with the situation at Chicago, and I insist that that is a correct statement, and I can take you around Chicago and show you a number of places where the switching runs up a street or an alley as in St. Joseph. You furnish a machine some day and I will take you out and show you a number. (Tr. 1718.) I said in connection with page 15 regarding Northern Pacific charges, that I had been advised they did not represent the cost of service, and this information came from L. R. Capron, traffic manager of the Northern Pacific Railway.

Mr. Brown: What did he say to you in connection with that?

The Witness: He analyzed this part of the exhibit for me.

Mr. Brown: I am asking you what he said?

Chairman Campbell: Well, now, I do not think we need to go into that.

Mr. Brown: Mr. Commissioner, are you going to take testimony like this, to the effect that it does not represent the cost of service, when he got it second-hand from some traffic man who probably does not know anything about the cost?

Chairman Campbell: Well, you have got that much out of him now, and you can argue in your brief that his testi- [fol. 1036] mony does not amount to anything because it is hearsay. (Tr. 1719.)

The Witness: As to rate of 2 cents per hundred pounds on grain and grain products, 10,000 pounds per car, the middle item shown on page 20, the rates between St. Louis, Missouri, and East St. Louis and Granite City, are not considered as switching charges. There is a river transfer haul—the Terminal Railroad Association over their own rails in St. Louis and across one of the bridges there, and then handled again in East St. Louis switching district, which is a separate and distinct district. (Tr. 1720.) If it originates in an elevator on the Terminal Railroad Association in St. Louis and is delivered to a mill or elevator on the same system of railroad at East St. Louis, I would call it a road-haul and the rate 2 cents per hundred pounds. The railroads built 5000 miles of track in Chicago to take care of the traffic, and they did not exercise poor judgment in so doing, but they should have a reasonable charge for the service they perform over them. (Tr. 1721.)

Cross-examination.

By H. J. Campbell:

In making statement that transportation conditions surrounding switching in Chicago were not comparable with those in other cities, which have been mentioned, I based it on the fact that a terminal the size of Chicago, with the area it covers, the volume of movement in the district, freight trains and passenger trains moving sometimes over the same tracks, creates congestion and the operating conditions of course are not comparable with the situation in St. Joseph or Council Bluffs. The fact that Chicago is larger is not the only factor I take into account in making

that statement. I mentioned the large volume of movement in the district, frequently through congested portions of it. There are probably other features that are different [fol. 1037] from those at St. Joseph, Missouri, for example. There are interruptions by passenger trains, switch trains held up at crossings, and matters of that nature (Tr. 1722), and suburban service on many of the roads, which must be given some preference over switching movements; and a very large portion of trackage in Chicago is elevated, with no elevation in any of the other cities that I know of.

When I was freight traffic manager of the Chicago & Alton Railroad, which served Chicago, Peoria, St. Louis, East St. Louis and Kansas City, I was out on the road a great many times and made a number of inspection trips over the terminals in those cities. At St. Louis we had an inspection; the Local Freight Agents Association had an inspection trip every year at that time, one once a year, and we went all over the terminals. They had inspection trips at Peoria, and I have been over all those terminals, not only on the trains, but I have walked over a good portion of them (Tr. 1723); and am thoroughly familiar with the conditions there, at Kansas City, St. Louis, East St. Louis, and Chicago. At Minneapolis I have been over the terminals to some extent, but not all over them. Am thoroughly familiar with the conditions at St. Joe, Missouri, and Council Bluffs. Have been in those cities and have been around the terminals, but did not go over all of them.

I enumerated other factors besides length of haul and density of traffic in Chicago. (Tr. 1724.)

Mr. Brown: Do you think shippers ought to pay for this detention caused by passenger traffic, suburban and otherwise?

The Witness: Shall I answer that?

Chairman Campbell: I am not sure that having offered the exhibit by way of comparison for the purpose of rates in Chicago, that the burden of proof is not upon the person offering it to show that operating conditions are the same. [fol. 1038] This witness has made the statement that they are different and has analyzed it and given a great many reasons why he believes that they are not the same; therefore I do not see any use in asking him for more when he has quit stating them.

Mr. H. J. Campbell: I was not asking him for more, Mr. Commissioner; I was simply trying to get from him what the different elements are.

Chairman Campbell: Well, he has given a number of different elements here; if he does not give any more you will have the right to assume that that is his complete answer.

Mr. H. J. Campbell: All right.

Chairman Campbell: We will adjourn the hearing until tomorrow morning, September 21, 1928, 9:30 Chicago daylight saving time. (Tr. 1726.)

Hearing reconvened at Chicago, September 21, 1928, at 9:30 o'clock A. M.

Mr. Davis: Before I begin with Mr. Tholin, I might say that yesterday I withdrew exhibits 8-A and 11-B, which dealt with the Chicago Heights situation, and have now distributed other exhibits to substitute for them.

Chairman Campbell: Very well.

K. E. Tholin, recalled as a witness, testified as follows:

Cross-examination

By Mr. Davis:

It is difficult to determine the time spent on this particular part of the work in compiling Exhibit 96. We had as many as 7 men at one time working on this case, and part of the time only two or three (Tr. 1728); and began [fol. 1039] a little work in July, 1927, but the working papers in support of carriers' exhibits were not available until, I think, it was about March 1st of this year. The work done covers not only the matter of detention, which is principally set forth, but, as stated yesterday, a study of the routings and other various matters in connection with the cost study. But we worked off and on beginning July, 1927, and since March this year have worked more or less constantly on it. (Tr. 1729.)

Mr. Davis: Is your position as representing the Illinois Commerce Commission, or whomever it is you represent

here, if not that Commission, while on the stand giving testimony and presenting your Exhibit 96, any different than your position was when Exhibit No. 83 was compiled, it being the composite exhibit and signed by you? (Tr. 1729.)

Mr. Walter: Well, Mr. Davis, that is a pretty broad question. Exhibit 83 covers a multitude of things.

Mr. Davis: Oh, no.

Mr. Walter: Now this exhibit deals with one.

Mr. Davis: I know, but he signed this and Mr. Slater said that he was not representing the views of the Illinois Commerce Commission as such, then. I want to know if his position is different on the witness stand than it was when he was working in the joint conference.

Mr. Walter: As to whether what he states is his view or the view of the Commission, is that it?

Mr. Davis: Yes.

Mr. Walter: I thought he made it very plain that it was his view altogether.

Mr. Slater: Yes.

Mr. Davis: On the stand?

[fol. 1040] Mr. Slater: Just a moment, Mr. Davis. Mr. Tholin has at no time, and neither have I, the right to express the view of the Illinois Commerce Commission in this case.

Mr. Davis: Well, that is what I want to know.

Mr. Slater: So his position must be the same, that he never has expressed the views of the Illinois Commerce Commission.

Mr. Davis: That is all I want to find out, if his position is the same. You will adopt that as your answer, will you?

The Witness: Yes, I will.

Mr. Davis: That is all. I just wanted to get straight on that because of the statement made at the time that this exhibit was introduced.

The Witness: Well, that is correct. (Tr. 1730.)

Chairman Campbell: Are there any other witnesses to be cross examined? Are there any others, those whom I might call, pick-up witnesses who want to be heard, who have not yet been heard, who are not being put on by Mr. Slater? Apparently not. Very well, then, Mr. Slater.

Mr. Slater: During the hearing at different times information was requested by the Illinois Commerce Commis-

sion or by myself as representing that Commission. I do not recall all the information requested, but presume the carriers have followed it as the requests were made. If there are any of the railroad witnesses present, or anyone who has been requested to furnish information, I would like to have them furnish it at this time.

Mr. Davis: As far as I am advised, we have tried to answer all requests. We have gone throught the record with the idea to set out the requests of the different parties, and we have tried to answer all of them.

Mr. Slater: They may have been answered; I have not been present all of the time; but if there is anyone present [fol. 1041] having information asked for (Tr. 1731), I ask that they step forward and give it at this time. One request made during the hearing was that certain of the short line railroads furnish the Commission a statement of the number of cars handled in different classes of service; that may not have been made on the record, but I recall that we wanted the information; but if not requested on the record, it is too late now to ask for it. We will find out from the record itself, but if anyone has the information we would like to have it at this time. Apparently there is no one present prepared with the information now. (Tr. 1732.)

Mr. Davis: Mr. Hurd is here, if you are ready for him on the cars you asked about yesterday, but I think as far as the record is concerned, that the information mentioned was asked for and is contained in Exhibits 90 and 91, or 89 and 91.

Mr. Slater: All right. (Tr. 1731.)

Ray Hurd, recalled as a witness, testified as follows:

Direct examination.

By Mr. Davis:

Yesterday I was requested to produce such records as we might have as to the movement Belt Railway index No. 586, car St. Paul 305276, moving from the St. Paul to the Athey Company at Clearing, showing the classification movement of the car from the Clearing yard up to the low line, and this is a copy of the out card showing the car

humped from No. 4 track in the west receiving yard, having arrived on that track, by Conductor Freiermyer, Belt engine No. 114, in a train of 63 cars. This was the 28th car, and was humped to track No. 19. (Tr. 1733.) The car was humped to track 19 in the east classification yard; [fol. 1042] the next paper record that would of course be a rehump card, because the industry tracks are on the west side of the yard. (Tr. 1734.) We have no paper record of the car moving from track 19 in the east classification yard to track No. 3 in the east receiving yard, but have a paper record of the car being humped from track No. 3 in the east receiving yard to industry track No. 52 in the west classification yard. Our first record shows it was humped to track 19 on the east side, and the written record is that it is on track 3 in the east receiving yard, ready to be humped again. Track 19 and track 3 are not the same, they are two separate and distinct yards, probably ¾ of a mile apart. To get a car from track 19 to track 3 on the east side, a switch engine would have to move it. (Tr. 1735.) The next record is the industrial clerk's record of a check of track No. 52 in the west classification yard, given to the conductor when he starts on his day's work. The car in question was the 14th car in his train. We do not have a paper record of that car moving from that point to the entrance to the industrial lead, which we call the low line. The next record is the check of the demurrage clerk, showing it placed the next morning, so those are the paper records that we have on that particular movement.

Cross-examination.

By Mr. Slater:

I do not know just how you would define classification. Our industries are all served from the west end of the yard, where we have four tracks set aside for that purpose. (Tr. 1736.) Trains coming in from the east side, those cars have to move over the hump down to the receiving yard, where they are checked and a cut-out card made such as this, so that the tower man can classify them. When [fol. 1043] they move from this classification yard on the east side down to the east receiving yard they are pulled there by the switch engine, then of course the hump engine comes against them, shoves them up, and they go down

into the industrial tracks where they belong. We keep a segregation of the engine hours during these different classes of service. It is not classification in the sense that a yard engine would be on, batting them down the various tracks as it would in the case inquired about, C. B. & Q. car 168589, moving from Chicago By-Products Coke Corporation at Hawthorne to the Austin Coal & Coke Company at Cragin, as to the movement of the car in the Cragin yard. This first sheet is a check of the train arriving at Cragin on track No. 3. Belt engine No. 96, at 9:45 P. M. on the 11th, going to the industry, the Austin Coal & Coke Company. (Tr. 1737.) We do not have a paper record of that yard engine switching the car from that track to the next. The next record would be the industrial yard clerk's record, and the next day being Sunday shows blank; on the 13th, the following day, the card shows it on track No. 15, which is the hold track, indicating that the industry was not ready for the car. It was car No. 6 that day. On the 14th it was still on track No. 15, being car No. 2. On the 15th it was still on track 15, car No. 4, but on the 15th at 2 P. M. the yard clerk hands the industrial engine a switch list for the industries, and this car shows up as the second of the three-car cut for the Austin Coal & Coke Company for spot No. 6, placed that afternoon, showing in the paper record the next morning in a check of the industry itself, the demurrage record. Those are the paper records we have on that movement; so these are the papers that we have of that movement, and these I hand you, Mr. Slater, are copies of them. (Tr. 1738.)

[fol. 1044] I did not make a check for each car. Our set-up was made from knowledge of the operations moving the car in a normal movement. This car did not move normally. It moved to the hold track, but my set-up would show the car moving as if it did move normally, because this would be probably an exception. In the check I spoke of yesterday I did not go through the details of each car included in my statement. I merely checked the cars in and out of the yards and did not attempt to check the number of times that a car may have been classified by a yard engine. (Tr. 1739.) My cost study did not reflect actual movement of the car nor reflect the credit from the demurrage charge that was collected from the shipper while it was on the hold track. My check did not take into con-

sideration nor count demurrage matters. I did not check the car detention at all. (Tr. 1739). In the assignment of the car in my original computation I did not have any service to the hold track because as I say, we did not check that far.

L. Anderson was duly sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am special accountant of the Illinois Central and Chicago & Illinois Western and was a member of the cost study committee of the railroads and represented these two roads on the committee. (Tr. 1740-1741.) I made the assignment of the element numbers in regard to traffic on those two lines for the month of September, 1926, involved in the cost study and am here at the request of the Illinois Commerce Commission.

Cross-examination.

By Mr. Tholan:

Speaking of the Chicago & Illinois Western; I made the [fol. 1045] assignment of these elements of cost from the information reflected from its car record which shows movement of cars between our 2 yards and records the replacement of the car at the industry. (Tr. 1741.) I looked up every individual car on both of these records and ascertained what they showed. The record does not show the classification of a car in the yard or show weighing services performed. We did not include weighing service in our cost study but the classification is based on information furnished by the general yard master. (Tr. 1742.) We did not use any unusual costs on the Chicago & Illinois Western, at least not that I recall now, No Sir. The industrial cost of $7.71, shown for the Steel Sales Corporation would not be an ordinary cost for that switching. Perhaps that is an extraordinary cost in that case, (Tr. 1742) but do not believe it enters into our cost study. The Steel Sales is located adjacent to our Crawford Avenue yard and the individual cost includes the time spent at the Steel

Sales and the time moving between the yard and the industry. It is a short move and no separation was made as to transfer service. The time on leaving the yard until they returned was charged to the Industrial service for Steel Sales which perhaps accounts for the higher charge than the average for industrial service. Except in this instance, our elements show transfer between yard and industry on the Chicago & Illinois Western. (Tr. 1743.) As to the Illinois Central the cost elements were assigned from our car record which reflects the offset of cars from interchange points or from or to the road and also movements between the yards. We do not have any record as to classification of the Illinois Central either. The index number 125 on the Illinois Central shows three classifications in Markham which must be a typographical error as we did not furnish over 2 classifications at the Markham yard. We did not set up separate classification of the cost [fol. 1046] at Markham for the South bound hump and the North bound hump. The reason for 2 classifications at Markham yard is because business received from an interchange point taken into Markham yard destined to an industry, we might say in the West Pullman District is received at Markham in a transfer cut which necessitates passing all the cars over the South bound hump and then all going to the West Pullman district are again given classification over the North bound hump in order to place them in an industrial cut for the next morning to the West Pullman district. (Tr. 1744.) We had no exceptionally high cost on the Illinois Central that we included in our cost study. I believe we had one or two charges covering team track switching. I do not believe we used the cost of $7.05 at the Standard Oil Co., at South Chicago in our cost study. We had no yard stick to determine what was high cost. We used whatever cost was developed, whether high or low and we are not attempting to use, either high or low cost. We developed actual cost of switching in an industry and applied it to our cost. If we did not have an element of cost developed from some movement in September, 1926, it was the practice to exclude that car from the cost study. (Tr. 1745.) I cannot say whether the West Pullman team track is open for industrial switching under the Lowrey rates, as I am not familiar with the tariff but I can state that shipments of gravel and stone to the R. F.

Conway Company on the Illinois Central shown as West Pullman team track were delivered from the West Pullman team track. That was developed from an examination of the records of West Pullman. If the R. F. Conway Co., had its own temporary industrial track in that neighborhood in 1926 it would be the same as our team track. It would be located in conjunction with ours. It shows in our records as a team track delivery and we would class it as such. (Tr. 1746.) The cost during a period of high volume would [fol. 1047] be somewhat different from the cost in a period of low volume. (Tr. 1746.) It depends somewhat on the volume of business.

Cross-examination.

By Mr. Walter:

We would have no car record showing cars delivered at or pulled from the plant of the By-Products Coke Corporation by the Chicago & Illinois Western which would be similar to the industries referred to in my testimony. (Tr. 1747.)

G. F. VIVIAN, recalled, testified as follows:

Direct examination.

By Mr. Davis:

I was the representative of the Chicago, Milwaukee, St. Paul & Pacific Railroad Co., in making the cost study and made the assignment of the element numbers on behalf of that company.

Cross-examination.

By Mr. Tholin:

I handled the entire proposition as to the preparation of cost during the study week. All the supervisors of the operating department assigned to the case reported direct to me and were 11 in number and all of those men were conductors taken off their various yard and transfer runs. I made all of the assignments in building up the cost study with the aid, of course, of various operating men. The

conductors were instructed to count all cars handled when there was work performed on them. (Tr. 1748.) If we had to switch a string of a hundred cars to get one, we would count one on that movement, being only one car handled, upon which work was done. The others would be merely taken off the same track and shoved back on again. (Tr. 1749.) As to index number 36, Indiana Harbor Belt to the National Tea Co., the interchange at Bensonville, we [fol. 1048] placed two classification charges on the movement at Bensonville because we had to break up the train in the one classification and had to make up a transfer in the other. That would be true of all cars moving out of Bensonville, though there might be a few instances where it is not true. Index numbers will indicate the exceptions if there are any. We determined when to apply 1 classification at Bensonville and when to apply 2 from the knowledge of the operating men who are working with me and other men. (Tr. 1749-1750.)

As to index No. 29, covering movement from Bensonville to Division St., we applied but 1 classification to that movement at Bensonville merely from the knowledge of the operating men in connection with the particular movement. Their knowledge was relied upon as to the number of classifications which should be given the car. (Tr. 1750.)

I made the indexes myself with the assistance of the various operating men but I do not remember the explanation of the operating men with regard to these two movements. It is too long ago; over a year ago, but it must have been satisfactory to me at the time or I would not have accepted it. I would not say that my attention was not called to the fact that there were 2 in the 1 case and only 1 in the other, because I worked on these things personally myself and we checked and rechecked as much as possible to see that everything was consistent. I know that condition was undoubtedly called to my attention. The operating man who worked with me on that is here in the room and can testify as to the reason for including the 2 in the 1 case and only 1 in the other. As to the 2 classifications at Kinzie St., if you refer to composite Exhibit Page 87, you will appreciate the reason for the 2 classifications. I might read a part of this answer. Kinzie Street,

[fol. 1049] as a whole is always pretty well congested territory. The particular item dealt with National Tea Co., having a 14 car capacity track with a surplus of from 40 to 60 loaded cars waiting for them daily, therefore, there is more or less additional classification on account of the order in which cars are requested to be placed. Transfer from Union Street brings these cars to Kinzie where they are set out and classified as to industries. (Tr. 1751.) After this classification, they are placed on the hold track and again classified after order of preference is received from industry. This shows the necessity of 2 classifications at Kinzie Street, compared with 1 at Union, where only the district classification is performed. More than 2 classifications are often made on the same car at Kinzie Street for firms having an excess amount of business such as the National Tea Co., and other industries on the consumer, hold and alley tracks. (Tr. 1752.) Hold and alley tracks, as well as consumer tracks are industrial spurs with many industries on them and that will fully cover the situation as to Bensonville or any other yard is concerned, that is sending cars into the Kenzie St., District, so far as Kinzie Street classification is concerned. (Tr. 1752.) In the indexes, we have not added any 3rd classification, confining them to the 2 classifications only. In a sense we are understanding our costs by the use of only 2 classifications instead of 3 or more as the case may be.

Referring to index 3 covering transfer movement from Bensonville to Western Avenue, classification there and transfer thence to Union St., and element 42 (Tr. 1752.) showing through transfer from Bensonville to Union Street of about 290 cars during the study period at a cost of 84¢ for the through movement while the cost of the combination including the classification in Western Avenue is about $1.22, we used the combination in certain instances [fol. 1050] because of the time of the arrival of the cars; rather than hold a car or a through transfer and delay the placement of the freight, it is better to keep it moving, therefore, they send it in piece meal transfers through Western Avenue. (Tr. 1753.) We do not have a record that will permit with a great deal of ease the checking of the car as to the particular train it moves in. Our conductors according to their working agreement with the company do not make any so called wheel reports or con-

sist reports of transfers. Our record is a track list. It indicates the conductor who is to handle the cars and when he takes the train he will cut out any bad orders and add any hot stuff the yard master wants. It is not a complete check. It is very difficult to follow our cars back as to the particular train that handled the car. (Tr. 1753.) Our car records show whether or not the car moved in piece meal service or moved in through service because the record will indicate if moving in through service Bensonville to Division Street. If moving in piece meal service, it will show the split as to the various yards that the car moved through. We checked the car records to determine exactly how the cars moved, but did not do it for all of the cars. We did not feel it was necessary. The operating men as I said, assisted me in the preparation of these index numbers; following that, we took our records and spot checked our cars.

Mr. Tholin: That is, you made up your indexes from an operating man's knowledge of the usual method of operation based upon the beginning point and the ending point and then after you had made up the index, possibly during the latter part of the Summer, you made some check of these indexes to see whether they were according to the actual movement or not. Is that it?

Witness: I would not say the latter part of the Summer now, Mr. Tholin, because it was done within a week of the [fol. 1051] close of the test period.

My indexes were prepared simultaneously with the cost study. They were started the day we received our first cars and we elaborated on them as we went through preparing our element numbers and index numbers. We ran our study from the 4th to 10th of August. I completed all the field work and dismissed the crew the first of September, the indexes being finished by that time. That was on the original 8 railroads, as to the others subsequently added, we took a subsequent period to prepare the information. Index No. 313 shows movement from Galewood transfer to Healy, classification there and industrial switching at the Wilcox Co., and index No. 311 shows movement into the Healy district but does not have classification there and those are correct as they stand. (Tr. 1755.) Some of the business going into the Healy district the classification work necessarily will be included in the

industrial work at the National Lumber & Timber Co., while at the Wilcox Co., the classification is done on the few tracks of the Healy yard if you can call it such. (Tr. 1756.) I have counted the cars inbound and outbound for industrial switching loaded and empty but there is no separate element for it.

Mr. Tholin: But by counting your cars that way you then have to apply your industrial switching cost as one cost for the car going in and another cost for the car coming out, do you not?

The Witness: I must, of necessity, follow my industrial car as to whether it is a reload, whether it went in empty or went out empty, as the case may be.

I consider that method as accurate as the other method used by other carriers, where they only counted loads. (Tr. [fol. 1052] 1756.) I do not know that it is any more accurate. It probably is not in the long run, but it adds some refinement to it and from my experience that is easier to follow. It is the course of least resistance. (Tr. 1757.)

I apply only one industrial switching charge where the car is a reload at the industry, otherwise by using the count of loaded cars it would be the total cost. (Tr. 1757.)

George B. Andeway, duly sworn, testified as follows:

Direct examination.

By Mr. Davis (Tr. 1757):

I reside in Chicago and am connected with the Pennsylvania Railroad and have been for 18 years or more. Am the representative of the superintendent and yard master and represented the Pennsylvania Railroad on the cost study committee. I assigned the indexes for the Pennsylvania Railroad which included both the Ft. Wayne and the Panhandle.

Cross-examination.

By Mr. Tholin:

In assigning the elements of cost, I followed the record of every car. We have records for about 95% of all the

movements within the Chicago Terminal district, (Tr. 1758) that is, transfers in interchange, transfers in industrial moves and hold track moves. We have 1 record of weighing service which I did not consult in certain cases. I could not make an index until after my cost study of engine hour cost was completed in the latter part of 1927. During the first part of September, 1927, I received from Illinois Freight Association several thousand car numbers covering cars moving in 1, 2 and 3 line hauls; and between the first of September and October 19, 1927, I checked each and every available record of the cars involved in the cost study. (Tr. 1759.)

[fol. 1053] Index No. 9B shows movement between American Maize and Taylor Street Team track, a one line haul and our complete record showed 3 cars moved on that index. Illinois Central Car No. 157404 was diverted through the plant and the cost set up under this index is correct for that reason. (Tr. 1760.) I do not know that our records for movements 47 to 275 show that the car moved from 55th Street to the Taylor Street team track. The move set up here is a normal one. (Tr. 1760.) Between the American Maize Products Co. and the Taylor Street team track they go on a hold track both at Colehour and at 55th St., and there is no cost set up or included in here. As to return movement our records would show whether they would go to 59th St., or 55th St. If I recall correctly, these cars move by way of grain alley through the North end of Union Depot and by the Panhandle to 59th St. In setting up my elements, I set them up as the cars moved during the year 1927 and not as they moved in 1926. We had unusual costs and cost on Albert Schwill was unusual. It shows up the facts, but I made use of that element. (Tr. 176-.)

H. Siddall was sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am statistician for the Rock Island Railway and have been in its employ for 13 years. Was a member of the cost study committee of the carriers and made the assignment of the element numbers for our railroad.

Cross-examination.

By Mr. Tholin (Tr. 1762):

We have a car record system on the Rock Island, showing movement of all cars between yards and interchange points and between industrial side tracks. This record was followed in the case of every car in the cost study in order [fol. 1054] to get the car movement. (Tr. 1763.) The record shows whether the car is under load or empty as it moves from one place to another. Index No. 137 Southern car No. 153679 shows it came empty from the South Chicago yard. Until I saw the statement, I would not say that we furnished you information showing this car was a re-load at the Rosenbaum elevator. I have not with me here a copy of the information I furnished you. (Tr. 1763.) As to index No. 162, we used a certain combination transfer, X-4, the principle being to determine what the average transfer cost was between any two points. Some of the cars moving in through transfer and some moving in combination of locals. Our records do not show whether the train in which the car moved for instance between Burr Oak and South Chicago stopped at other points or not. It would simply show moving from 1 yard to another. The train in which the car moved may have stopped and cut our cars at other points, but there was no method by which I could tell. (Tr. 1764.)

T. J. Murphy was sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am connected with the Elgin, Joliet & Eastern Railroad and was a member of carrier's Cost Study Committee in this case and made the assignment of the index numbers for the Elgin, Joliet & Eastern. (Tr. 1765.)

Cross-examination.

By Mr. Tholan:

I determined the movement of some of the cars from records. Where it was my knowledge that cars moved in

normal movements, I did not have to refer to records. (Tr. 1765.) The trains may stop at various stations enroute and they may not and in some cases they may move all [fol. 1055] the way through to destination. Referring to index No. 151, a movement from Illinois Steel at South Chicago to Walter Bates Steel Corporation, using an industrial switching movement or a transfer movement from the Chicago South Shore and South Bend Railroad, to the Gary Screw & Bolt Co. When this was assigned to the Walter Bates Steel Corporation, we used the transfer move from the Walter Bates Steel Corporation to the Gary Screw & Bolt Co., because they are not situated in the same locality. In getting the car to the Walter Bates Steel Corporation, we used the last transfer move that ended at the Gary Screw & Bolt Co., because that car came into Kirk yard, (Tr. 1766) and would be classified there and then leave on a transfer run that handles all these industries over what we call the city track. The Walter Bates Steel Corporation is about half or a quarter of a mile from the Gary Screw & Bolt Co. We used this transfer run to the Gary Screw & Bolt Co., because it would be a piece meal transfer on this particular run. We assigned weighing service from our records as we have records of all weighing services. I did not look up every one of these cars to determine whether it had 1 or 2 weighing services. At the Illinois Steel Company, all cars going in empty are weighed, both before and after loading. That applies to every car. It is the movement on outbound loads that we show in our cost study. I made no computation of the revenue we would collect for weighing service, my part in this study was only from an operating standpoint. (Tr. 1767.) I do not know of any unusual costs on the Elgin, Joliet & Eastern and the cost developed as shown in our 107, has been considered as normal costs. Very conservative, I should say. (Tr. 1768.)

[fol. 1056] F. A. Meyers was recalled as a witness and testified as follows:

Cross-examination.

By Mr. Tholin:

In the composite exhibit we show a combination of local moves between Gibson and Norpaul which are Gibson to

Chicago Ridge, Chicago Ridge to Argo, Argo to La Grange and La Grange to Norpaul, total $2.06, compared with the through movement of about 83¢ and we used the combination because cars actually moved at least in the main in local movements. (Tr. 1769.) We used the 4 particular movements in that combination because that is the way the cars normally run. That is normally when they make up these local trains they generally stop at the points mentioned. (Tr. 1769.) Referring to the elements mentioned, Gibson to Chicago Ridge being the first movement, shows there were 283 cars in the study which moved in 5 trains and another element, Gibson to Argo which would take in 2 of the movements with 1022 cars moving in 16 trains. The cars that move to Argo we run straight trains from Gibson at different times. Sometimes there will be a train, if the volume is heavy enough with the Chicago & Alton's at Argo he will probably set out his whole train at Argo; pick up his train there and go on West. (Tr. 1770.)

E. A. Mueller, being duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Am assistant chief clerk to the General Auditor of the Baltimore & Ohio Chicago Terminal Railroad, residing in Chicago and represented that railroad on the carrier's cost study committee. (Tr. 1770.)

[fol. 1057] Cross examination.

By Mr. Tholin:

In making the assignments I referred to actual records but not on each and every car. While we were making up the index numbers with the assistance of the operating men we made a spot check of approximately 100 cars. I cannot say offhand the number of cars we had in our study. In following out the method of using operating knowledge as to cars which normally move the operating men were right with me and I had their assistance in the matter. (Tr. 1771.) We used a considerable number of

combinations of local moves on the Baltimore & Ohio Chicago Terminal because from the knowledge of the operating men, that is the normal way the cars move. (Tr. 1771.) I do not recall that we had any unusual cost on our railroad. (Tr. 1771-1772.) We had no measuring stick to determine an unusual cost. Everything was based on the test period study. Whatever the test period developed we used and we had a car for the particular plant.

R. W. Fletcher was sworn and testified as follows:

Direct examination.

By Mr. Davis.

Am auditor of miscellaneous accounts of the Chicago, Burlington & Quincy Railroad and was the representative of that road on the cost study committee of the carriers in this case.

Cross-examination.

By Mr. Tholin.

In making assignments of cost I did not refer to record to find out exactly how the cars moved. We made the assignment according to normal movement of cars based on statement furnished by the operating department copy of which was furnished to you, Mr. Elmore and Mr. Oliver.

The statement showed normal routing and was used in [fol. 1058] connection with actual service as indicated by the C. S.-1's. (Tr. 1773.)

Index No. 42 including interchange element No. 80 amounting to 47¢ and not included — ~~index no. 70~~ may represent a difference in operating methods due to the fact that the Chicago & Northwestern may sometimes come in and pick up cars for their road, and where we sometimes make delivery to the Northwestern. There is an interchange cost charge wherever one is furnished under the normal routing of the movement. We checked that for each car to determine that we did really interchange it in this one case and therefore had the cost. (Tr. 1774.) In the other cases we did not interchange it, but the North-

western came in and picked the car up. (Tr. 1774-1775.) In setting up two industrial switching costs on all industries where we supplied the empty and moved the load, we determine the average industrial switching cost by dividing that by all the cars handled, giving one average cost for the service and the cost at that industry would be affected according to whether or not there was an empty car set or whether the outbound movement applied after a reload. We therefore have two rates for the industry. We consider that more accurate in doing it that way so as to include only one charge in case of a reload of a car. We had no unusual cost on our road that we excluded from our computations. The costs we used are the actual figures appearing in the records of the company as developed in the cost study period. (Tr. 1775.)

A. G. Nutt, sworn, testified as follows:

Direct examination.

By Mr. Davis:

[Vol. 1059] Am agent of Illinois Northern Railway and was a member of the carriers' cost study committee in this case; and made the assignment of the index numbers for my road.

Cross-examination.

By Mr. Tholin:

In determining the elements of cost to apply I did not trace every car from our records. We applied them from such records as were available and from my own knowledge as to the normal movement. We have weighing records but did not check them in all cases. (Tr. 1776.) We know what cars are to be weighed for each or our industries; we have those instructions standing for certain commodities. We did not have any unusual costs on our railroad. The costs we developed we used and had a car moving to the particular point. (Tr. 1777.)

Mr. Tholin: I will ask for just two more railroads, the Chicago & North Western and the Chicago, West Pullman & Southern.

Mr. Davis: Call Mr. Werner. You will excuse the Chicago Short Line, as I understand it, then? You just want the Northwestern and the West Pullman?

Mr. Tholin: Yes.

Mr. Davis: All right. (Tr. 1777.)

GEORGE P. B. WERNER sworn and testified as follows:

Direct examination:

By Mr. Davis (Tr. 1777.):

Reside in Chicago and am chief clerk to the superintendent of the Chicago, West Pullman & Southern, and was the representative of that railroad on the railroads' cost study committee in this case. (Tr. 1778.)

[fol. 1060] Cross-examination:

I prepared these indexes from the records of movements of cars from my general knowledge. I did not have records for all the information that I required. (Tr. 1778.) The elements assigned to Index 4 cover movement from Indiana Harbor Belt to Chicago Malleable Castings Company on our railroad and returned to the Indiana Harbor Belt empty. We got these cars out of the Indiana Harbor Belt yard at 118th Street and the interchange cost shown is $1.02. The next cost is the classification at Irondale, 42 cents. The next the transfer service from Irondale to the Panhandle at West Pullman. The next is the classification by the West Pullman switch engine; 1-A is West Pullman and is another classification which you will find on the West Pullman (Tr. 1779); 1-A was used both at Irondale and West Pullman. We have one classification cost which includes both of those points. Well, no, there are two different costs there. One is the classification at Irondale and the other is the classification at West Pullman by two different engines, shown by 1-A, but there is a classification 1-A at Irondale and classification 1-A at West Pullman. (Tr. 1780.) The next movement is a transfer to the Chicago Malleable Castings Company, No. 2-B; the next, industrial switching at that plant. In determining per car industrial switching cost we divided the total by the total number of

cars, loads and empties. The next is the transfer of the empty from Chicago Malleable Castings Company back to the West Pullman yard (Tr. 1781), and there classified by the West Pullman engine. (Tr. 1782.) Our record does not show that we have a classification both at Irondale and West Pullman at that point in the index. The 1-B there, classification at West Pullman, is the transfer engine bringing [fol. 1061] the cars from West Pullman to Irondale, or vice versa. He lines up his long train, which is a transfer movement. The next is a transfer movement from West Pullman to the Illinois Central at Fordham, where we pick up cars from that road from Irondale. This car did not go to the Illinois Central at Fordham. It was en route to Irondale. (Tr. 1782.) The next is a transfer service from Illinois Central to the Pullman Railroad, where we pick up cars going to Irondale. The next, a transfer from Pullman Junction to Irondale, and there another classification and an interchange cost with the Indiana Harbor Belt. The other items, MA and MB, are trackage charges paid the Illinois Central and Rock Island for running over their rails. (Tr. 1783.) I do not know of any unusual cost developed on our railroad. We did not use every cost developed during the study period. We excluded a movement to the Hicknian-Williams plant in the test period that we did not have in 1926.

Cross-examination.

By Mr. Walter (Tr. 1783):

We have charged up in our account something like $18.00 per car for cleaning cars on the Chicago, West Pullman & Southern preceding the service of loading them with pig iron. We did not charge that to any switching movement. We put it in here in the cost study, that is, the detention. The cleaning of the car was not necessarily due to its previous loading or the failure of the shipper to take it out. On page 88 of Exhibit 83 is an explanation that I do not believe I could add anything to. (Tr. 1784.) The reason we charge the cleaning against this movement of pig iron when the previous movement might have been in road-haul is that the car is under demurrage as soon as it arrives in the yard and is placed on the track for cleaning. I would not say that although it was the failure of the previous

[fol. 1062] shipper to fully unload, we put the car under demurrage against the Wisconsin Steel Company, but did say that we put it on the track and it was under demurrage. (Tr. 1785.)

J. E. CRONIN sworn and testified as follows:

Direct examination.

By Mr. Davis (Tr. 1785):

Am statistician of the Chicago Short Line Railroad Company and worked with Mr. Feely in connection with the Chicago Short Line Railroad in the cost study, on the committee, and assisted in the assignment of the index numbers.

Cross-examination.

By Mr. Tholin:

Index DO-420 is a movement of an empty car from the Elgin, Joliet & Eastern moving out to the Belt Railway loaded. The first element, D-106, shows interchange with Belt Railway of Chicago at South Chicago yard (Tr. 1786), which is apparently an error and should be shown as an Elgin, Joliet & Eastern interchange point. Index No. D-0435 covers movement from Belt Railway to Baltimore & Ohio Chicago Terminal, where we received these cars empty from the Belt and loaded them at the By-Products Coke Corporation, and No. D-113 is our index for industrial switching at that plant, showing we moved those cars out of the By-Products Coke plant. Item C-13 covers interchange to the Indiana Harbor Belt at Burnham. The element of service there was misapplied. That should read C-14, and I believe is explained thoroughly in Exhibit 83 on page 51. (Tr. 1787.) We determine from our records the roads from which the cars were received or delivered to, and with the assistance of the operating representatives [fol. 1063] we assigned the elements; by assistance I mean the judgment of the operating officials, and I accepted it as the normal movement of traffic. (Tr. 1788.)

Mr. Slater: I would like to have about four or five of the railroads, the Illinois Northern, the Chicago Junction, the

Chicago Short Line, or any other railroads desiring so to do, to submit to us the total number of cars handled during the last year in each class of service for which they received revenue, whether empty or loaded, separated as to the class of service. For instance, industrial switching, single-line, for connecting line, empty movement, revenue traffic only. I have only designated two or three, but there are four, five or six different classifications that will be divided, but just the total number of the cars for the year. (Tr. 1789.)

Chairman Campbell: Why could it not be put in the shape of an exhibit, with the understanding that it will be filed within a certain length of time and that any party who desires to criticise it may have a certain limited time in which to do that? (Tr. 1790.)

Mr. Slater: That is agreeable.

Chairman Campbell: Is there any objection to that?

Mr. Walter: That seems to be all right from our standpoint.

Chairman Campbell: How long would that take, Mr. Davis?

Mr. Davis: Well, I do not know. There is quite a lot of work involved in that, but here is what I would like to do. I would like to have Mr. Slater and Mr. Tholin write us a letter specifying in detail as to what is wanted, so that we will make no mistake about it.

Mr. Slater: I will be glad to give it to you in detail.

Mr. Davis: And then we will try to get it as soon as we can, if it is possible at all to get it, and if it is not possible [fol. 1064] to get it we will advise Mr. Slater to that effect, but I think it is possible.

Mr. Slater: It is available.

Mr. Davis: If it is then we will furnish it just as soon as we can, in the shape of an exhibit. (Tr. 1790.)

Chairman Campbell: That should be done. How long will that take you?

Mr. Davis: We will have to run all our records for a year's business, and the best estimate these gentlemen give me offhand is two months.

Chairman Campbell: Well, you write your letter, Mr. Slater, and if it can be done Mr. Davis will do it as soon as possible, which would not necessarily delay the filing of the briefs.

Mr. Slater: No.

Mr. Davis: I do not think so.

Mr. Slater: Will that be made a part of the record in this case, Mr. Commissioner? (Tr. 1791.)

Chairman Campbell: Yes, I think it better be filed in the record, at any rate the same as the correspondence would be, so that it becomes a part of the record if anyone wants to refer to it.

Mr. Slater: Mr. Tholin thinks if the exhibit covers the business for every third month of the year it will be sufficient.

Chairman Campbell: Well, will it be every other month of every third month?

Mr. Slater: Every third month beginning with the month of January as the first month, and taking every third month.

Chairman Campbell: All right. (Tr. 1792.)

Mr. Walter: Taking page 116 of Exhibit 83, we ask that the carriers file a list of industries in the Chicago switching [fol. 1065] district where they own the sidetracks of the industry, together with the mileage in each industry, of all roads.

Chairman Campbell: That ought not to take much time.

Mr. Walter: Further, in connection with the following items: Exhibit 83, page 148, F-4a; page 52, F-4b; page 148, F-43; page 53, F-4; page 30, F-4c; page 54, F-4B; page 150, F-4j; page 55, F-4h; page 56, F-41; page 151, F-4j; page 152, F-41; page 111, D-3; page 34, D-4; and page 38, E-14, recite situations where there is a roundabout movement, and in connection with these items there are disputes—I give these merely as illustrative—due to the failure of the carriers to use the direct routes. I think it is important, in connection with this case, that the records show definitely whether we are right or whether the carriers are right. As the Commission has a bureau of service representative here, who knows Chicago territory, I request that he be directed to examine the situation (Tr. 1793) as to each of the particular situations, and others stated in Exhibit 83 along the same line, and make a report which will be embodied in this record. It may not help us; on the contrary it may hurt us; but I think the facts ought to be established of record, and therefore I request that he make a report and that such report be made a part of the record. (Tr. 1794.)

The purpose of such report is to settle the dispute as shown in Exhibit 83 between the railroads' position and the position of the shippers.

Chairman Campbell: Well, Mr. Walter, in making that request, do I understand that the gentleman you refer to is to be taken as an arbitrator of the facts, that his finding is to be binding upon the parties?

Mr. Walter: No, your Honor; it will be binding in so far [fol. 1066] as I am concerned. * * * We have set forth our position in this agreed document. There is a square dispute of facts, and I would like to have an experienced man make an investigation and a report, and am perfectly agreeable to having the carriers assign a man to make that investigation with him. (Tr. 1794-1795.)

What I had in mind was that this man would, on the ground, inspect the facilities, see whether there was a joint use where one was possible, and where there was not a joint use, why there was not such joint use; in other words, take this as illustrative and have the man go on the ground, make a report which would be used by the Commission in evidence just as this record is to be used in evidence. (Tr. 1795.)

Chairman Campbell: Is it your position, Mr. Walter, that if that be done, briefs will not be filed pending your investigation?

Mr. Walter: Well, yes, your Honor, but still there are some other matters that have got to be handled in the meantime that will delay the filing of briefs. (Tr. 1797-1798.)

Taking 4-A just as an illustration of a movement. The Indiana Harbor Belt has trackage rights over the Belt Railway to 40th Avenue yard of the North Western, crossing the Baltimore & Ohio Chicago Terminal near its 40th Avenue yard. That would form a much shorter route than via Barr yard, and we think with a little cooperation between carriers, it would save a lot of expense and a lot of time. A still shorter route is set forth therein, and we think it is important to the cost study to determine whether they have put in these long expensive routes when they had a much shorter route. (Tr. 1799.)

Chairman Campbell: I do not see, Mr. Walter, how that can be done without having a further hearing, and we have got to end this thing sometime.

Mr. Walter: That is true, Mr. Commissioner, but it ought [fol. 1067] not to be ended until it is ended right.

Mr. Davis: But that gets to the proposition, taking it by and large, of whether we should revamp the Chicago terminals and build them over again, and as if there was not anything here but having the knowledge that we now have. That is what it all amounts to. (Tr. 1799.)

Mr. Walter: Take the Indiana Harbor Belt, the Baltimore & Ohio, and the Belt Railway, and look at the duplication of service that could be avoided by coordination of these terminal roads, and put the Chicago Junction along with them. See what could be saved to the carriers and shippers. I think the Commission is coming to the point in switching matters where it ought to get all this duplication and expense out of the way (Tr. 1799), and this is the first case you have had where there is an opportunity to look exhaustively into the situation. It may lead ultimately to unification of terminals, and that might not be a bad thing for all of us. (Tr. 1800.)

Chairman Campbell: I do not see how that can be done, Mr. Walter, without our having a further hearing. I would not want an investigation of that sort made and then filed, and then have somebody say "We had no chance to answer that, and we had no chance to examine it." (Tr. 1800.) If we are going to do that we better have a hearing in Washington.

Mr. Walter: Very well.

Chairman Campbell: With the understanding that everything else is to be excluded excepting those exhibits.

Mr. Walter: All right.

Chairman Campbell: What do you say to that, Mr. Davis?

Mr. Davis: I do not think that will do at all, Mr. Chairman; I do not think we should do that. They have a theory as to whether there should be a consolidation of terminals [fol. 1068] in Chicago, that is what it gets back to, and that question is not here.

Chairman Campbell: My own thought is that we should not get into that sort of an investigation. That is not involved here. Now, as to whether or not these terminals should be revamped is a service matter. It may come to that in time, but not here yet. We should not bring these things. The Commission should be very careful not to bring things beyond what the intention was when the in-

vestigation began. I think I shall have to refuse the request at this time. (Tr. 1801.) I think the only way that should be dealt with, if at all, would have to be by a petition filed with the Commission with a view of having such an investigation made independently. I do not believe it is here in this case.

Mr. Slater: I do not assume that Mr. Walter would want a different record in the Illinois case than in the interstate case.

Mr. Walter: No, I would not. But I think there is a failure to apprehend what I am asking for. Here is a statement of costs. In the case of the items I have read into the record is a square challenge of the correctness of the carriers' statements that that is the normal and proper method of handling traffic. It is certainly not the proper method of handling the traffic. Of course the burden is on them, and here is a square conflict. We are taking one position and they are taking another position. All I am trying to do is to get the conflict removed, and shall ask that, the burden being on them, and there being a square conflict, they have not sustained the burden. But it does seem to me that here would be a good time, when the carriers for road-haul purposes have made a certain arrangement (Tr. 1802), and they handle traffic in a certain manner, to take care of road-[fol. 1069] haul business, and the purpose of the arrangements being to get road-haul business—I say, here is a good time to have an authoritative determination by the two regulatory bodies whether it would be better for carriers and better for shippers if certain trackage rights were utilized and if certain connections which are now feasible and open were actually utilized for the movement of freight. (Tr. 1803.)

Chairman Campbell: I think, Mr. Walter, the question is not before us. You have a perfect right to argue that point in your briefs, and in that way criticise the cost study of the carriers, but that is a service matter, as I said before, which I certainly do not want to go into in this case. (Tr. 1803.) * * * I think, Mr. Walter, I shall have to refuse your request. (Tr. 1805.)

Mr. Connell: Mr. Chairman, while we are waiting, I would like to clear up a printer's error on page 27 of Mr. Galligan's Exhibit 85, in the middle of the page. (Tr. 1805.) It shows via M. C. from Kensington and Hammond,

via various routes. It is all right as far as from Kensington via Illinois Central, but the next should read, "Kensington via Pullman Railroad, $6.30 and $9.00," then there should be a line. The next should read, "Baltimore & Ohio Chicago Terminal via Gibson yard and Indiana Harbor Belt, $15.50 and $14.50." Then there should be another line. The next item should read, "Baltimore & Ohio Chicago Terminal via Kensington and Belt Railroad, $12.50 and $13.00," and then another line. The next item should read, "Indiana Harbor, New York Central, Illinois Division, via Gibson direct, $9.00 and $8.10," and another line. The last item is "Chicago River & Indiana via Union Stock yards, $7.13, and $13.00."

Chairman Campbell: The correction may be made. (Tr. 1806-1807.)

[fol. 1070] G. W. Oliver, recalled, testified as follows:

Direct examination.

By Mr. Walter:

Am the same Oliver who testified previously. Since the receipt of Exhibits 7-A and 11-A have tried to identify some of the excepted rates which are now below the Lowrey basis and which are proposed to be increased to the Lowrey level, with the statistical information shown in Exhibits 11-A and 7-A. (Tr. 1807.) Referring to the pig iron rate from Federal Furnace Company to the Interstate Iron & Steel Company, a single-line Illinois intrastate haul, the cost for cars moving under this rate was included on page 11 of Exhibit 7-A. Approximately 23 cars were included in the study for that movement. Page 11 shows total of 56 cars of pig iron were included in the cost study, moving at rates less than Lowrey tariff intrastate Illinois, which they propose to raise approximately 1 cent per hundred pounds. (Tr. 1808.) The cost per car shown by the railroads is $12.36, while present revenue is $19.56 per car, reflecting an operating ratio of 63 per cent. This is an average for pig iron, in addition to shipments from the Federal Furnace Company to the Interstate Iron & Steel Company. The record in this case indicates that the cost for this particular pig iron is less than the cost shown on page 11. There was a large movement from the Federal

Furnace Company to the Interstate Iron & Steel Company which moved by the Pennsylvania. These cars were not included in the cost study (Tr. 1808), but shown on page 20 of Exhibit No. 11-A, being included with an 89-car item for pig iron shown on the sheet. The costs are not given for these cars, since Exhibit No. 11-A only shows traffic statistics. Page 20, Exhibit No. 11-A, shows number of [fol. 1071] commodities proposed to raise up to the full Lowrey basis. These cars were not included in the cost study. Page 8, Exhibit No. 11-A, shows corresponding information, that is cars moving intrastate Illinois at less than Lowrey tariff, which it is proposed to raise to the Lowrey tariff, which are included in the cost study.

Page 8 shows 541 cars of clay, gravel, sand and stone were studied, and which will be increased to the full Lowrey basis; page 20 are 935 to be raised to the full Lowrey basis which were not studied. (Tr. 1809.)

Page 8, Exhibit 7-A, shows that costs per car for the 541 which were studied, as compiled by the railroads, were $15.78 per car, with present revenue $20.46 per car, reflecting an operating ratio of 77 per cent. This information is being used as justification for increasing the rate on 935 cars not studied. Again contrasting page 8 with page 20, it will be noted that on the latter it is proposed to increase rates on fresh meats and other packing house products to the full Lowrey basis (Tr. 1810); but page 8 shows that cost studies were not made on any of these cars, so that no information is available for testing the proposed increases on these two commodities. The same is true as to 89 cars of pig iron shown on page 20, no cost figures being available for that pig iron and for 70 cars of iron and steel, 21 cars of ice and 96 cars miscellaneous freight shown in the last line of page 20. (Tr. 1810.)

Miscellaneous group No. 69, page 9, Exhibit 7-A, shows total cost for this group as $17.18 per car (Tr. 1810); present revenue $13.17 per car cost being in excess of the revenue. The miscellaneous group includes various commodities. The more important included are ashes, cinders, scrap iron, refuse and coal tar, though I do not know that any of that moved Indiana intrastate. (Tr. 1811.) The [fol. 1072] costs shown are at least not representative of scrap iron as a commodity. I have information showing revenues per car for pig iron moving intrastate Indiana

from one of the shippers, approximately $20.00 per car, which compared with cost of $17.18 claimed by carriers, depicts a totally different situation from that shown for the general average for the miscellaneous groups. (Tr. 1811.) There are a number of other excepted rates which are to be increased, and some which are not to be, which were not included in the cost study and no costs are shown. Such further analysis as we will want to make of these exhibits will have to be deferred until the brief has been prepared. The only way the costs for these excepted commodities could be obtained would be by reference to the working papers of the railroad. (Tr. 1811.)

As to car repairs, Mr. Saur contends that the day basis is as fair as any for the purpose of determining them. The position of the shippers is outlined on pages 263 to 269 of the transcript and also on page 168 of Exhibit 83. Mr. Rummel's claim that more cars are damaged in terminals than on the road means little unless something is known of the relative amount of the time of cars in the terminals, on the road, and also unless something is known as to the number of cars which were not damaged. It appears from Mr. Rummel's testimony that a very small percentage of cars handled in terminals are damaged in connection with switching operations. (Tr. 1812.) Very complete and reliable information could be secured on the effect of switching upon car repairs by reference to the repair accounts of the switching railroads which operate in the Chicago switching district. (Tr. 1813.)

Exhibit 96 shows freight train car repairs for 8 switching railroads in the Chicago district for the year 1926, [fol. 1073-] amounting to $617,695.00, including not only repairs to cars owned or leased by these railroads for which the owner is responsible, but also repairs to foreign cars for which these 8 particular railroads are responsible. The annual reports of the Interstate Commerce Commisssion show these 8 railroads handled 2,642,284 cars of revenue freight in the year 1926. Dividing the repair expenses by this figure produced an average of 23 cents per car handled, which reflects not only the amount per car resulting from switching damage, but also the amount due to the ownership of a certain number of cars. These particular railroads, on December 31, 1926, owned or leased 2,686 cars for which owners' repairs would amount to a rather substantial sum and would tend to reduce the 23-cent per car

figure. (Tr. 1813.) As previously stated, a new allowance for this situation would produce a figure amounting to about 15 cents per car handled. That to my mind shows the kind of repairs testified to by Mr. Rummel are not of importance. I do not think repairs of that character can be measured by the time basis, or that the other kind of repairs, which relate to mileage made by the car and to other causes resulting from the use of the car, can be measured by it. (Tr. 1814.) Illustrating this is the very small percentage of time assigned to cars in the switching district representing time when a car is actually being moved or being switched. Mr. Saur states that mileage in switching movements could not be computed or ascertained. This is correct unless done by putting a cyclometer on every one of the cars. I believe that an outside figure can be estimated which can be safely figured. The railroad exhibits show average haul on single line is about 12 miles. If we assume 100 per cent empty haul, that would add 12 miles, making 24. Then, some allowance should be made for the fact that there are more or less back hauls in connection [fol. 1074] with getting cars from an industry to the base yard and in mileage around the yard, (Tr. 1814) from one part of the yard to another and in shunting cars back and forth in connection with flat switching. 12 miles for this service would be an outside average and would produce 36 miles which a single line car might make in connection with a single line movement. The usual average allowed for locomotives in switching service is 6 miles per hour and might be taken as typical of time spent in which these cars would move in switching service. This would produce an average of 6 hours per shipment or one fourth of a day. Total days detention assigned by the railroads to single line hauls is 6.6 days. The mileage equated into hours is about 4% of total time assigned by railroads to single line hauls. In other words, the car is standing still 96% of the time and moving about 4 per cent. Another calculation is to divide the 36 miles estimated as maximum mileage by 6.6 days detention which produced miles per day of 5½. This may be compared with the average for the traffic including road haul movements and terminal movements of about 30 miles per day. (Tr. 1815.) On any basis which carries into terminal operations where cars make only 5½ miles per day, and where they stand still

96% of the time, an average car detention cost of 64¢ per day based upon a much higher percentage of moving time and upon 30 miles per car day, is absolutely wrong. I do not think car time can be taken as a measure of car repairs and applied to the number of days detailed any more than mileage can be taken and applied to the miles per day moved in terminal service. By that, I mean to take average repairs per car mile and assume that cars moving in terminal service have their cost. I think that would produce a cost that is far too low. Likewise, I think the use of the time basis produces a cost that is too high. I be-[fol. 1075] lieve that any basis that might be adopted should consider both time and mileage and damage to cars in switching operations and all other factors. I previously submitted a basis taking in account all these factors and including an allowance for switching damage which Mr. Saur and Mr. Rummell claim is important, based upon operations of these switching railroads. The results I have worked out there are far more accurate than the time basis produced and it is certainly a much more conservative method than that used by the carriers. (Tr. 1816.) The railroads considered my method on page 171 of Exhibit 83 on the ground that the method was based on certain assumptions and upon an investigation made by the mechanical committee of the American Railway Engineering Association, which committee developed a formula showing the amount of car repairs attributable to use and those not affected by use. The railroads claim these processes are full of arbitrary exceptions, nevertheless, I believe each step that I have taken where I have not relied upon the experience of mechanical experts is conservative and does result in a more reasonable charge than that worked up by the railroad. The railroad plan of using car time for determining car repairs is really a single grand assumption and I think is a much more defective method than to analyze and to adopt a number of conservative assumptions in each step. (Tr. 1817.) In Little Rock switching case 140, I. C. C., 533, the carriers presented cost studies in which repair costs measured by damage to cars while switched in the terminal were distributed to various classes of switching service on the car day basis and the Commission considered this plan and disposed of it as not being a proper method. The Commission found that

the principal damage to a car in terminals was in classification and Mr. Rummell confirms this view. (Tr. 1817.) [fol. 1076] The cost studies presented show that Chicago switching district traffic is a much lower percentage of classification service than all switching traffic. Page 43 of Exhibit 13 shows 36.6% of total engine hours for all switching services are in classification work while of the total engine hours assigned to switching district traffic, only 20.4% are for classification time. It seems to me this point alone is enough to dispose of the propriety of the use of the car day basis for determining car repairs. This question is one of the most important points in dispute between the various parties to this case and is one reason why I have taken so long on this subject. (Tr. 1818.)

Mr. Davis: Mr. Vivian made a statement which he used when he introduced Exhibit- 8-A, 11-A and 11-B and Mr. Oliver and Mr. Walter thought it would be well to introduce it in evidence which we offer as Exhibit No. 97. It was received in evidence marked, "Exhibit 97, Witness Vivian." (Tr. 1819.)

We offer in rebuttal of Exhibit 96, introduced by the Illinois Commerce Commission, our Exhibit 98, which was thereupon received in evidence, marked "Exhibit No. 98." (Tr. 1819.)

E. F. Sauer, recalled, testified as follows:

Direct examination.

By Mr. Davis:

The notice issued by the Interstate Commerce Commission October 25, 1926, contains data to be furnished by carriers and paragraph "G" requests that cost data be submitted. The cost data committee was created of representatives from the Pennsylvania, the Baltimore & Ohio, the Big 4, Erie, Chicago & Northwestern, Chicago, Milwaukee, St. Paul & Pacific, Belt Railway, and the Elgin, Joliet and Eastern, but since cost data collected during winter operations could not be considered as representative, [fol. 1077] the action of this committee was directed to supplying other statistical data called for in the notice and at a hearing in Chicago on February 15, 1927, 2 exhibits

were offered by Chairman Galligan, numbered 1 and 2. (Tr. 1820.) These statistics resulted from an analysis of carload traffic having both point of origin and destination in the Chicago district moving over all railroads in that district during September, 1926. (Tr. 1820.) These exhibits were reintroduced at the hearing on May 15, 1928, and numbered 9 and 10. On May 25, 1927, the Interstate Commerce Commission requested that cost data be submitted and that exhibits 1 and 2 above mentioned be restated by commodities. (Tr. 1820.) On July 19, 1927, the Commission by notice indicated the character and scope of the cost study to be made in which cost studies were requested on the following roads: Indiana Harbor Belt; Baltimore & Ohio Chicago Terminal; Elgin, Joliet & Eastern; Belt Railroad; Chicago and Northwestern; Pennsylvania; Chicago, Burlington & Quincy and the Chicago, Milwaukee, St. Paul & Pacific. Exhibits 1 and 2 previously referred to only included iron and steel articles on the Elgin, Joliet & Eastern railroad and Chairman Campbell verbally requested that in the cost study to be conducted and in the restatement of the traffic analysis other commodities handled by the Elgin, Joliet & Eastern should be included. On October 29, 1927, the Interstate Commerce Commission by notice provided for additional cost studies on the following railroads, Illinois Central; Chicago, Rock Island & Pacific; Chicago Short Line; Chicago & Illinois Western; Chicago West Pullman & Southern; Illinois Northern and Pullman Railroad, making a total of 15 roads on which the cost study was conducted, in June, August and October, 1927. At the second hearing on January 15, 1928, held in Chicago, the carriers introduced 5 Exhibits covering only the basic data used in the cost study. At the 3rd hearing herein, May 15, [fol. 1078] 1928, the carriers submitted Exhibit No. 7, showing result of cost studies as applied to switching in the Chicago District, Exhibit 8 showing cost of switching between Chicago and Chicago Heights and Exhibit 11 being restatement of the original traffic analysis shown in Exhibits 1 and 2 previously referred to and which were reintroduced at this hearing numbered 9 and 10. During the conduct of the studies in August and October, covering 12 out of the 15 railroads, the Burlington, Chicago and Northwestern and Chicago, Milwaukee, St. Paul & Pacific studies having been conducted in June, 1927, an observer was

present, representing the Interstate Commerce Commission and also an observer representing Chicago shippers. As a result of an understanding at the hearing beginning on May 15, 1928, joint conferences of representatives of carriers, shippers and the Commissions were held to iron out as far as possible the differences complained of and at the hearing announced September 18, 1928, was presented a concise statement embodying the shippers' position, (Tr. 1822) and the position of the carriers together with the position taken by representatives of the Illinois Commerce Commission and the Public Service Commission of Indiana, and pursuant to requests, Exhibits 7, 8 and 11 were restated to show traffic moving on the Lowrey basis of rates, those below the Lowrey and those above and further subdivided between interstate traffic, intrastate Indiana and intrastate Illinois traffic. The restatement of the Exhibits last referred to has been introduced as Exhibits 7-A, 8-A, 11-A and 11-B. 108 specific allegations were offered by shippers' representatives and from the transcript of testimony some 20 additional allegations were developed and the result of the numerous joint conferences referred to, are imbodied in Exhibit No. 83. The Exhibit shows that of the total number of allegations, 74.3 per cent resulted in agreements; of which 72 per cent were statements [fol. 1079] of fact and 2.3% statements of principle. (Tr. 1823.) Included in the statement of facts 69 allegations or 54% of the total were those including allegations which had little or no affect, those which were satisfactorily answered, abnormal costs and alleged errors which were fully explained and allegations relating to operating practice some of which contained statements which shippers' representatives were not in a position to affirm or deny, so that in a general way, it may be said that 54% of the allegations might have been omitted without seriously impairing the study as a whole, 25.7 per cent of the allegations resulted in disagreements of which 21.9 per cent related to statements of fact. Out of the 128 allegations with respect to 86 cases or 67 per cent, the Illinois Commerce Commission noted "no comments". The Public Service Commission of Indiana had a representative present at only 3 sessions and it was agreed that the position of that commission would be the same as that taken by the Illinois Commerce Commission unless some different specific reply was offered, which was

not done in any case. (Tr. 1824.) The Illinois Commerce Commission presented separately 18 allegations considered at the 20th joint conference and disposed of, and the results of those deliberations were embodied in Exhibit 84. All of the allegations involving monetary results, 20 in number, 10 of which were of relatively minor importance, were conceded to have been the result of clerical errors on the part of the carriers and when the fact is taken into consideration that costs were set up on some 26,000 cars, this percentage of errors is certainly insignificant. The real difference of consequences are embodied in 10 of the 128 allegations. The analysis necessary to be made by the carriers to prepare for these joint conferences showed [fol. 1080] the net understatement in Exhibit No. 7 amounted to $28,879.97 which separated between 1, 2 and 3 line hauls and on the basis of an operating ratio of 67.4 per cent justifies rates respectively of 2.97¢, 3.66¢ and 4.41¢; of the 10 allegations involving understatements on part of the carriers, 3 of them were agreed to in principle by the shippers representatives although no agreement could be reached as to the amount involved and it is the position of carriers that these 3 items aggregate $45,000 or approximately the 10 per cent estimated in the statement in the carriers offered at the May hearing. (Tr. 1825.)

It is the position of carriers that in the other 7 allegations in which over statements are claimed by shippers that the claims are purely theoretical and have not been supported by substantial evidence.

It is the further position of the carriers that the cost study committee would gladly welcome any real constructive criticism of the formula used but it is its opinion and particularly of the experienced cost accountants that the evidence offered at the joint conference constituted no reasonable basis for making fundamental changes in the formula as it now exists. (Tr. 1826.)

Cross-examination.

By Mr. Walter:

In stating the claims of the carriers as to the amounts of money in the understatement, I included only the carriers, and no computation as to the shippers has been made.

We claim that the shippers representative has not substantiated their claims in our opinion and we claim that we have, (Tr. 1926) and that is all set forth in Exhibit 83. I am not merely reiterating our position as set forth in that exhibit but what I am trying to do is to make somewhat of a brief summary not only of this hearing, but of the case since our cost study committee has come in contact with it.

[fol. 1081] Chairman Campbell: It really, as I understand it is a statement virtually as to what the contention of the carriers will be in their brief and for the purpose of clearly setting out the claim of the carriers.

Mr. Davis: That was the purpose. (Tr. 1827.)

Cross-examination.

By Mr. Tholin:

Referring to Exhibit 98, the detention as originally recorded in the working pages of carriers is set up by ours, and included in the group called 1 day, that is, that day's car detention is set up in the Exhibit. What this is intended to show is the number of cost study cars that were involved. In the item called 1 day, I do not recall just how the hours were converted into days. (Tr. 1828.)

M. R. Vivian, recalled, testified as follows:

Cross-examination.

By Mr. Tholin:

The 1 day happens to be a 24 hour period but if there is any break there would naturally be the fraction of a day. Everything was carried in hours and converted into days and hours and based on 24 hours. If a car was involved for 24 hours, that is not included. The other hour being less than half, it would probably be dropped and would be called 1 day and on up to 35, it depends on how they would add up and the disposition of the fractions. (Tr. 1829.)

Colloquy.

Chairman Campbell: Are there any more witnesses to be presented?

Mr. Davis: No, sir. That closes our case. And as stated in the former hearing about keeping these tariffs under suspension, it is the purpose of the carriers to keep them under suspension until this matter can be disposed of, both as to intrastate and interstate. And that will include [fol. 1082] the individual lines as it did before. (Tr. 1830.)

Mr. Keene: Mr. Chairman, before we get to the matter of briefs, I want to request that Mr. Davis have Mr. Vivian furnish under commodity group 66 on pages 7, 8 and 9 of Exhibit 7-A the particular commodities included.

Chairman Campbell: Can that readily be done, Mr. Davis?

Mr. Davis: I think so if they do not ask too many things.

Chairman Campbell: We will not allow too many things. That will be done then in a reasonable time. I assume there is no necessity for fixing a time for that. It will be done as quickly as possible.

Mr. Davis: If that has not already been furnished, we will furnish it.

Mr. Keene: If Mr. Vivian says the commodity in that particular place in Exhibit 7-A is the same as to which he furnished me the information that will be sufficient—if he will announce that that is the same commodity. (Tr. 1831.)

Chairman Campbell: Briefs will be due on December 15. (Tr. 1832.)

Mr. Slater: Just 1 statement; the notice issued by the Interstate Commerce Commission showing the time and place of hearing has been accepted as notice in the Illinois case. Now that there may be no claim made that the record is not properly before the Commission, I would be very pleased if the parties to this case would stipulate at this time that the record made in this hearing shall be the record in the Illinois case before the Illinois Commission.

[fol. 1083] Mr. Walter: That is stipulated by the representatives of the shippers.

Mr. Davis: And by the carriers.

Chairman Campbell: Then with the exception of the requests made by Mr. Slater and Mr. Keene, the record in this case is closed, at 12:30 P. M., September 21, 1928. (Tr. 1833.)

(Pages 1834 to 2125, inclusive, of the record in the above entitled proceedings covers the transcript of the oral argu-

ment of counsel in said cause before the Interstate Commerce Commission held at Washington, D. C., December 3 and 4, 1930; and that portion of the transcript is not abstracted. Abstractor.)

At Chicago, Illinois, a further hearing before the Interstate Commerce Commission, in Docket No. 19,610, involving switching rates in the Chicago district, was held at Chicago, Illinois, May 2, 1932, at 10 o'clock A. M., before Howard C. Faul, W. B. Wilbur, Examiners of the Commission pursuant to the Commission's order therefore and the following proceedings were had. (Tr. 2126.)

Examiner Faul: The Interstate Commerce Commission has assigned for further hearing today, Docket No. 19610, switching rates in the Chicago District, but only with respect to the relation of the rates and charges for switching intrastate commerce to the rates and charges prescribed for like switching in interstate commerce, for the purpose of determining whether the adjustment of the interstate rates and charges and the intrastate rates and charges, is [fol. 1084] unduly prejudicial to interstate shippers and traffic and unjustly preferential of intrastate shippers or traffic or unjustly discriminatory against interstate commerce.

The complaint in Docket 24950, the Acme Steel Co., et al., vs. Atchison, Topeka & Santa Fe Railway Co., will be heard at the conclusion of the further hearing in this case, No. 19,610. (Tr. 2134.)

Mr. Walter: If the Examiner please, I think we ought to have the record that is made in the present case that is Docket 19610 also a part of the record in the other case or in other words have the two matters heard on the same record.

Mr. Davis: We object to that. (Tr. 2134.)

Examiner Faul: To what extent are the issues the same in the 2 cases, Mr. Walter.

Mr. Walter: The primary question is what is the lawful switching rate to be applied within the Chicago Switching District. That is involved in 24950. After you have determined the interstate level, the next question is what does Section 3 require, we have the same parties, the same railroad tracks, the same movement, differing only as between points within the district.

Examiner Faul: But the reasonableness of the interstate rates have already been determined.

Mr. Walter: Yes, determined 5 years ago. We are now dealing with the situation today and the decision of the Commission cannot be based upon a record that is so old. We had the last testimony taken in 1928 and it dealt with a cost study of 1927 and the traffic study of 1926, and while the Commission declined to reopen the case on all questions involved, we now have a situation that must be determined not only Section 3 but Section 1. (Tr. 2140.)

[fol. 1085] Examiner Faul: Mr. Walter, you made the same argument in your recent petition to the Commission for a rehearing and to bring the record down to date and that petition or those petitions were denied.

Mr. Walter: That is right. * * * What I am insisting upon, however, is that taking into consideration the convenience of the parties and the economies of the matter, the simplified procedure and the unbroken precedent of the Commission, that the testimony be made a part of the record for use in either case. (Tr. 2142.)

Mr. Davis: Is it not true, Mr. Walter that what you want is that you can in your formal complaint case refer to any of the evidence or exhibits in this 19610 case and that in the 19,610 case the 13th section case, you can refer to any of the testimony or exhibits present in the formal complaint case.

Mr. Walter: To the same extent as if offered in the particular case. That is all I want.

Examiner Faul: But only so far as it covers the same issue.

Mr. Walter: Surely, in so far as it bears upon the issues. In other words, that in 24950 the evidence in 19610 be considered only insofar as it bears upon the reasonableness of the rates and that the evidence in 24950 be considered in 19610 only as it bears upon the question at issue in this case 19610.

Examiner Faul: We will proceed with that understanding and if Mr. Davis has any objection when the question comes up, we will rule on it at the time in the 19610 case. (Tr. 2150.)

Mr. Ames: If the Examiner please, you have limited the issues in 19610 as I understand to a question of relationship as between the intrastate rates and the interstate rates.

[fol. 1086] Examiner Faul: To the question of the relationship between the interstate rates and the intrastate rates under Section 13 issue.

Mr. Ames: Is the question of the measure of the state rates as such an open question under your rule.

Examiner Faul: I understand that in any section 13 case you can show that the intrastate rates are reasonable maximum rates. (Tr. 2153.)

G. F. Vivian, duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Am statistician of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, representing the Chicago district railroads in this proceeding. I appeared at the hearing in the original case, Docket 19610, introducing several exhibits, and have prepared several exhibits to be introduced at this time, which were prepared under my supervision and direction and for which I vouch. Of the two exhibits distributed on April 18th one is a restatement of Exhibit No. 11 A, which we ask be identified as Exhibit No. 99; and the second shows on its face to be a restatement of Exhibit No. 11 B, marked Exhibit No. 100, offered at this time subject to objection. (Said documents received in evidence and marked "Exhibits Nos. 99 and 100, respectively, Witness Vivian.") (Tr. 2158 2159.)

Exhibit 11 A introduced in the original case was a detailed analysis of traffic moving in September, 1926, in the Chicago district in carloads, and showed the present and proposed revenue by commodities, separated as between the various rate adjustments, the present Lowrey, proposed Lowrey, present over Lowrey, etc. (Tr. 2159.) For the purpose of this hearing I have made a recapitula[fol. 1087] tion of the one, two and three-line hauls, separating or maintaining the separation by commodities, but consolidating all the various rate adjustment details. Will present the intrastate Illinois and the intrastate Indiana traffic separately, further separating them between one, two and three-line hauls. The details in this exhibit

from pages 2 to 8, inclusive, are the same as the details shown in the original Exhibit 11-A, in so far as column headings are concerned and the commodity groups. The classification of commodities used in this exhibit is the same as that used in Exhibit 11-A, even though the railroads are operating under a new classification of commodities.

Page 1 of the exhibit recapitulates the details of pages 2 to 8, the totals being traced back to each page. The lower box shows net loss due to refusal of state commissions to permit present interstate rates to become effective on intrastate traffic. September was considered as 1-12 of the year, and the estimated loss prepared on that basis. This loss as to Illinois intrastate (Tr. 2160) traffic is $1,927,000, Indiana intrastate $117,000, or a total of $2,045,000 as estimated annual loss to carriers in the Chicago switching district. This is predicated entirely upon the traffic of September, 1926, which was the basis of the traffic study in Exhibit 11-A. (Tr. 2161.) Exhibit 11-B in the original case was similar to Exhibit 11-A, except that it covered the traffic between Chicago and Chicago Heights, and Exhibit 100 is a restatement. The recapitulation of Exhibit 100 has been carried through in similar manner to Exhibit 99, and the loss prepared on the same basis. The loss on Illinois intrastate on an annual basis, based on traffic moving in September, 1926, is $129,000. (Tr. 2161.)

The basis of the figures in these two exhibits just explained is to be found in the exhibits to which I have made [fol. 1088] reference and which have been distributed in 19610. In ascertaining whether traffic was moving with the same regularity in volume in 1931 and 1932 we selected the second week of November, 1931, and the second week of January, 1932, one period prior to the effective date of the interstate rates and the other period subsequent thereto. We selected the January period rather than December to avoid holiday accumulations that might occur. A week rather than a month's study was deemed sufficient in each instance, in order to reduce as much as possible the cost of compilation. The November period selected was prior to the effective dates of the rates prescribed for interstate application in Docket 19610 (Tr. 2162), and the January

period was after the interstate rates in that docket had become effective.

Have prepared an exhibit showing result of week's movement from November 9th to 15th within the district proper, marked as Exhibit 101, offered at this time subject to objection. (Said document was received in evidence, marked "Exhibit No. 101, Witness Vivian.") (Tr. 2163.) Exhibit 101 shows in detail in a similar manner to Exhibits 11 A and 99 the details (Tr. 2163) of traffic moving intrastate, both Illinois and Indiana, under the rates of those two states, showing the tariff basis under which it moved or the rate groupings; as an illustration, page 3 shows one line intrastate Illinois, present Lowrey, proposed Lowrey; while page 4 shows present over Lowrey, proposed Lowrey. Where no movement occurred we have inserted pages so marked, rather than leave out any reference and thus cause confusion. On page 1 is recapitulation of these details, while loss is indicated in the lower block. For Illinois one, two and three line hauls combined indicates loss of $947,600 per annum, and in Indiana $69,950, total $1,017,600. We allocated this on the annual basis stated, upon [fol. 1089] an analysis of all cars handled in the district in 1931, and a comparison of that week to the cars handled in 1931, and that percentage was applied to a week's figures of loss to determine the annual loss during 1931. (Tr. 2164.)

The difference in the figures in Exhibit 99, basing loss upon the movement in September, 1926, and the figures shown on page 1 of Exhibit 101, is due primarily to the general falling off of business. (Tr. 2164-2165.)

Exhibit No. 102 covers Chicago Heights Chicago district business, offered subject to objection. (Said document was received in evidence, marked "Exhibit No. 102, Witness Vivian.") (Tr. 2165.) Exhibit 102 was prepared in similar manner for the test period November 9th to 15th, representing traffic moving between Chicago and Chicago Heights, Illinois. Pages 2 to 16, inclusive, show details, with recapitulation on page 1. The lower block shows loss due to refusal of Illinois Commerce Commission to permit interstate rates to become effective on intrastate traffic, amounting to $46,152 for the year, prepared on a similar basis to that described for Exhibit 101 as to annual loss. (Tr. 2165.)

Have prepared two exhibits similar to those just described, covering the week of January 11th to 17th, 1932, after the interstate rates became effective on interstate traffic, but not effective on state traffic. (Tr. 2165.)

The first one deals with the district, is marked Exhibit 103, and is offered subject to objection. (Said document received in evidence, marked "Exhibit No. 103, Witness Vivian.") (Tr. 2166.) Exhibit 103 was prepared in similar manner, with an identical setup to that used for Exhibit 101. The week's business has been allocated to a year's business on the same principle used in Exhibits 101 and [fol. 1090] 102. We used the cars handled in 1931 rather than to include any period of 1932, so it is a comparison of the week January 11th to 17th with the volume of business handled in 1931, and showing loss on intrastate Illinois traffic of $899,000, and on intrastate Indiana traffic of $82,500, total $981,600. These are statements in round figures, and am not reading the fractions. (Tr. 2166-2167.)

Exhibit 101 shows traffic of the Chicago switching district moving in the week November 9th to 15th, and is the traffic that moved in that month and the shipments actually moved in the period covered by the exhibits. (Tr. 2167.) In allocating the week's business January 11 to 17, 1932, to an annual basis, we used 1931 in both Exhibits 101 and 103, so far as the year was concerned, to relate the week to the year. Exhibit 103 covers cars actually moved in January, 1932. The traffic in November, 1931, was less than in September, 1926, while January, 1932, was still smaller than November, 1931. (Tr. 2168-2169.)

Exhibit 99 shows loss based on 1926 is over $2,000,000, and in 101 the loss is $1,000,000-plus, while Exhibit 103 shows loss is less than $1,000,000, and that is due entirely to the lesser tonnage.

My next exhibit, 104, is offered subject to objection. (Said document received in evidence, marked "Exhibit No. 104, Witness Vivian.") (Tr. 2170.) Exhibit 104 is of similar character to Exhibit 102, but covers traffic moving during the week of January 11th to 17th, inclusive, 1932, between Chicago and Chicago Heights, and shows the estimated loss, prepared on basis similar to that previously described, approximates $58,000. (Tr. 2170.)

[fol. 1091] I have prepared another exhibit to ascertain whether or not there has been any change in the traffic

that can be attributable to the difference in rates, which is marked Exhibit No. 105 and offered subject to objection. (Tr. 2170-2171.)

Mr. Walter: If the Examiner please, I assume that objection to all of these exhibits can be considered as held in abeyance until we have had a chance to see a little more about what they are, and particularly as to this one exhibit, as to its dissimilarity.

Examiner Faul: Certainly; you will be given an opportunity to present any objections that you have to these exhibits.

(Said document received in evidence and marked "Exhibit No. 105, Witness Vivian.") (Tr. 2171.)

The Witness: On pages 4 to 33, Exhibit 105, are the details by rate groups and commodities, showing cars, tons and revenue prior and subsequent to December 10, 1931, together with appropriate averages, with recapitulation for the two tests on pages 2 and 3. In addition to the details on pages 2 and 3 are shown the percentages to the total for each of the types of traffic, that is, intrastate Illinois and intrastate Indiana, the total of the two, the interstate, and the grand total. The details shown on pages 4 to 33 are interstate details not previously reported in any of the preceding exhibits, the preceding exhibits in all cases showing details of intrastate traffic and the percentages of these two recapitulations on pages 2 and 3 have been charted and shown on page 1. (Tr. 2172.)

Taking page 1 under the heading Cars, for the November period, 1931, is 37.59; and for January, 1932, the figure is 41.26 (Tr. 2172), which are figures showing the percentages of the total of all traffic, one-, two- and three-line hauls combined, moving intrastate so far as number of [fol. 1092] cars is concerned during the two study periods November 9th to 15th and January 11th to 17th, and indicate that a larger number of cars moved Illinois intrastate than moved in November, that is, a larger proportion of the total volume; and that is true regarding block shown under the heading "Tons." In similar manner the percentages on Indiana intrastate in cars and also in tons is shown. The cars increased from 7.47 per cent to 7.99 per cent from November to January. The total intrastate shows increase in cars from 45.6 per cent in November, 1931, to 49.25 per cent in January, 1932.

This has then been compared with the interstate proportionate volume in the two periods. The November study shows interstate 54.94 per cent of total, while January decreased to 50.75 per cent. (Tr. 2173.) In similar manner the tons for total intrastate indicate increase from 42.01 per cent in November, 1931, to 46.63 per cent in January, 1932, with corresponding decrease in tons interstate from 57.99 to 53.37. The details for one-, two- and three-line hauls are shown. The one-line haul shows a slightly reverse situation in Illinois intrastate, with slight increase in interstate, but the two- and three-line hauls, the latter in particular, show material falling off in interstate and a proportionate increase in intrastate business, both in cars and tons. The percentages used in all cases are those reflected on pages 2 and 3 of this exhibit.

The exhibit covering the Chicago Heights movement is 106, offered subject to objection. (Said document received in evidence, marked "Exhibit No. 106, Witness Vivian.") (Tr. 2174.) Exhibit 106 was prepared in the same manner as 105. (Tr. 2174.) The details in the latter part of it, pages 4 to 33, inclusive, being the interstate traffic, while [fol. 1093] the recapitulation of the two periods are shown on pages 2 and 3. The chart on page 1 shows considerable increase in intrastate Illinois traffic, both in cars and tons, the cars running from 51.52 per cent in November, 1931, to 69.32 per cent in January, 1932; while interstate traffic dropped from 48.48 per cent in November, 1931, to 30.68 per cent in January, 1932. The two- and three-line hauls reflect similar conditions. There were no four-line hauls interstate.

Have prepared an exhibit of selected data by operating expenses, showing operating ratios, taxes, cars handled, and appropriate averages by year, for the period 1928 to 1931, both inclusive, marked Exhibit No. 107, offered in evidence subject to objection. (Said document received in evidence, marked "Exhibit No. 107, Witness Vivian.") (Tr. 2175.) The details by individual roads of the 8 switching carriers are shown on pages 2 to 9, inclusive, of Ex. 107, containing the same information as the recapitulation on page 1, which shows, for the 8 switching carriers in the Chicago district, the operating expenses for each of the years 1928, 1929, 1930 and 1931, separated according to the various groups Maintenance of Way and Structures,

Maintenance of Equipment, Traffic, Transportation, and General. Miscellaneous Operations and Transportation for Investment Credit are both omitted, as these items are extremely small and do not in any way influence the situation. The total operating expenses shown are the same as all the accounts previously enumerated, with the exception of the Miscellaneous Operation and Transportation for Investment Credit. We show the sum of operating expenses and tax accruals, with total cars handled, reported to the Interstate Commerce Commission in the annual report of the carriers, and in each instance throughout this entire exhibit the information has been abstracted from the re-
[fol. 1094] ports of the carriers to the Commission. (Tr. 2176.) The lower block shows averages per car handled, and shows total operating expenses per car handled increased from $3.86 in 1928 to $4.04 in 1931, and with tax accruals added the cost per car increased from $4.34 to $4.65; while the operating ratio, which is a true composite and not a simple average, has increased from 66.97 per cent to 74.11 per cent in 1931. (Tr. 2177.)

Have prepared similar information regarding the trunk lines in the original cost study, marked Exhibit No. 108, offered in evidence subject to objection. (Said document received in evidence and marked "Exhibit No. 108, Witness Vivian.") (Tr. 2177.) The figures for the individual roads are shown on pages 2 to 8, both inclusive, and in each instance are system figures for each of the railroads and are not comparable with switching lines and have been kept separate, although the information is of identical character, the various accounts being the same and the years being the same. (Tr. 2177.) The cars handled in each case have been revenue carload freight only, as reported in the commodity statistics in the annual reports to the Interstate Commerce Commission. The figures show total operating expenses increased from $74.72 per car in 1928 to $79.16 per car in 1931. With taxes added the increase was from $81.03 in 1928 to $86.45 in 1931, while the operating ratio increased from 73.8 per cent in 1928 to 78.45 per cent in 1931. (Tr. 2178.)

Have prepared an exhibit marked 109, dealing with railway operating revenues, expenses, net operating income, rate of return, and operating ratio, offered subject to objection. (Said document received in evidence and marked

"Exhibit No. 109, Witness Vivian.") (Tr. 2178.) Exhibit 109 shows similar conditions to the two previous exhibits, [fol. 1095] but covers all Class 1 carriers in the United States and large switching and terminal carriers, and indicates the rate of return in 1928 for Eastern district, ranging from 5.22 per cent in 1928 to 2.26 per cent in 1931; for the Southern district, excluding the Pocahontas region, return ranging from 4.14 per cent in 1928 to .34 per cent in 1931; for the Western district a decrease from 4.35 per cent in 1928 to 1.86 in 1931; while the entire United States has decreased from 4.72 per cent in 1928 to 1.98 per cent in 1931. In each instance for the entire United States the operating ratio has increased from 72.41 per cent in 1928 to 77.08 per cent in 1931. This information is taken from the Bureau of Railway Economics, Railway Revenues and Expenses, Monthly Report, Series No. 244 and 268. (Tr. 2179.)

The purpose of Exhibits 105 and 106 is to show there has been a routing of traffic from interstate routes to intrastate routes between the two periods of study, that is, November, which was prior to the effective date of the interstate increase, and January, which was subsequent. (Tr. 2180.) The figures do not take into consideration Ex Parte 103 increases. Those have been omitted in all instances. (Tr. 2180.)

We undertook to find out whether or not the lower basis of rates applying within the district, either in Indiana or Illinois, than applied to interstate shipments caused shipments to be routed over the state routes in preference to the interstate routes. (Tr. 2181.) To get that information we sent requests to the various carriers to furnish movements taking place subsequent to December 10, 1931, that were being routed via intrastate routes in preference to interstate. The information which we collected is not complete; in fact, no attempt was made to obtain complete data, as the length of time available for such study was [fol. 1096] entirely too short (Tr. 2181) to permit a complete statement, and we have prepared only illustrations of the rerouting of freight by shippers via intrastate in preference to interstate. (Tr. 2182.) The exhibit is marked 110, offered in evidence subject to objection. (Said document received in evidence, marked "Exhibit No. 110, Witness Vivian.") (Tr. 2182.) The exhibit shows dia-

grams of the routes shipments would take interstate and routes they did take to keep the shipments intrastate. (Tr. 2182.)

Page 1 of Exhibit 410 shows 30 illustrations embracing 334 cars moving between December 10, 1931, and March 3, 1932, inclusive. The illustrations are in symbols, beginning on page 1 with A (Tr. 2182) and ending with O, and the illustration later refers to the maps in the latter part of the exhibit, following page 4. On page 1 of the exhibit, under the columns headed Consignor and Consignee, we have used figures instead of giving names of either the consignors or the consignees, which was done under advice of Mr. Davis so as not to disclose names of either the consignors or the consignees. (Tr. 2183.) The working sheets show who those people are. (Tr. 2183.)

As to each movement we show switching charges which would accrue under the normal interstate route, compared with actual intrastate route. For the 334 cars we show loss of $3281.36 in revenue. The next three pages show illustrations of similar character, but we have not prepared maps for these, as the general illustrations which we have given cover the situation. (Tr. 2183.) We also show 522 more cars with an additional revenue loss of $4375.14. We have illustrated more than one-third of the cars we have found and the aggregate loss is $7656.50 of the 856 car total. (Tr. 2184.)

[fol. 1097] The map in each illustration was drawn to scale, the original map being extremely large, with track layouts in each having been checked by the engineering departments of the various railroads in Chicago so that we know that the track layouts are accurate. The railroads are shown by either solid lines, dash lines, or dot and dash lines, as the case may be, so that where one railroad delivers a car out and another picks it up it is clearly indicated. In each instance the black line is the interstate or natural route which the traffic followed prior to December 10, 1931, and the red line in each instance is the route now followed by the car to avoid an interstate movement and make it intrastate. (Tr. 2184.) The red line indicates an intrastate route in each instance. (Tr. 2184.) The mileages of both are shown, which was scaled from the original map. The industries between which the cars are moving are shown by numbers, and they are the ones that

appear in the analysis and details of traffic shown on the first four pages of the exhibit. The maps cover only the first page, and all figures are on the first page of the traffic analysis. (Tr. 2185.)

Illustrating how these movements would take place as between interstate and intrastate industry, No. 1 is as good as any (Tr. 2185), which is the one below the words "Barr yard," and indicates that it is two different plants of the same concern, where the same number is used in the different locations. And another movement as illustrative would be from industry No. 1 to industry No. 2, shown in the lower lefthand corner. (Tr. 2186.) From industry No. 1 the car is moved via the black line to a point midway between South Chicago yard and Colehour yard by the [fol. 1098] Pennsylvania railroad. From that point it is carried across the state line into the Colehour yard where it is put into a transfer train and moved via Clark Junction to the East Chicago yard of the Baltimore & Ohio Chicago Terminal, and from there the latter handles it in a transfer train moving to Barr yard, and from there it moves directly west, then south and southeast to industry No. 2 or No. 1, as the case may be, where it is placed, a distance of approximately 30 miles, which requires crossing of the state line in two different places. (Tr. 2186.)

Since the effective date of the interstate rate of December 10, 1931, these cars have moved via the red line north to 108th Street from industry No. 1, thence to the South Chicago yard of the Pennsylvania Railroad, there transferred to the Garfield Boulevard yard and from thence to 59th Street yard; thence north to the Homan Avenue yard of the Baltimore & Ohio Chicago Terminal, at which point the latter handles the car, carrying it back over more or less the same route past the 59th Street yard and south to Barr yard. From there it is placed in a transfer, taken back west to the Junction, and thence South and East to the industry. In this manner the car does not cross the state line, but follows an unnatural route covering a distance of 42 miles for the movement.

That is the principle upon which the other maps in Exhibit 110 are made. I call the one route the natural one and the other the unnatural (Tr. 2187), because I am told by operating people that the latter is the unnatural route because it must go against the flow of traffic; that to de-

velop economy and efficiency of service certain routes have been designed for the movement of certain types of traffic and to move this car via the red line is against the general flow of traffic. Prior to the effective date of the rates prescribed in Docket 19610 the black lines represent the [fol. 1099] lines traffic followed, as developed in our cost study, and otherwise, and that is one reason why I call these routes the natural ones, though it is not necessarily the shortest route in every instance. There are illustrations in here where the red line is shorter than the black line. (Tr. 2188.) There would be two lines via the black line and via the red line. In each instance the black line route and the red line route, two carriers would be involved, the same two railroads. The solid line is the Pennsylvania; and under the scale of miles of all railroads involved the Pennsylvania shows with the heavy line, the solid line, and that indicates that solid line is printed in both red and black for the route and the distance that they handle the car; and similarly the Baltimore & Ohio Chicago Terminal is shown with a dash line in both the red and the black.

Mr. Walter: Mr. Examiner, I would like to ask that you direct the witness to give us the names of the consignors and the consignees, so that we may know what the plants are and can make such investigation in the way of rebuttal as may be necessary, and would like also to know the character of the commodity. (Tr. 2189.) If they can furnish it today, it will shorten the time we will need to make our own investigations, and would want it to cover the 35 Mr. Vivian has here.

Examiner Faul: There is no objection on the part of any shipper to having this information disclosed in there, is there? I hear no objections here, so Mr. Davis will furnish the information to Mr. Walter. I understand this will suffice for his purposes.

Mr. Walter: Yes.

Mr. Davis: Very well, Mr. Examiner, let the record [fol. 1100] show that it is given to Mr. Walter in the form of a list of 118 industries as listed in Exhibit 110.

Examiner Faul: Proceed. (Tr. 2191.)

The Witness: Illustration N, a red line, is a route in which three carriers are involved, an unnatural route, approximating 13 miles. Via the black line, the natural route,

we have two carriers involved, and that traffic crosses the state line twice in making the movement, and in that instance the black line route, the natural one, is longer than the red line or the unnatural route, the former being 38 miles and the latter 13. (Tr. 2192.)

Nothing has been worked out to show whether the black line route, being some 20 miles farther than the red line route, was the more economical route of the two. (Tr. 2193.) But I have worked out some figures from the standpoint of the element of cost of service applied to Illustration A. From industry 1 on illustration A to industry 3, an industry at Harvey, the element of service was industrial switching at No. 1; transfer therefrom to Colehour yard the normal route; classification Colehour yard (Tr. 2195); and transfer thereform to Baltimore & Ohio Chicago Terminal yard at East Chicago, Indiana; interchange with that line being at East Chicago; classification by it in their East Chicago yard; transfer by it therefrom to Barr yard; classification there and transfer therefrom to Harvey; classification Harvey and industrial switching at industry No. 3, with total cost $10.41 of switching cost only. Now on the unnatural route industrial switching at industry No. 1; transfer to 108th Street yard; classification there that is all Pennsylvania operation; transfer from 108th Street to the South Chicago yard, a special move by locomotive; transfer from that yard to 55th Street, the Gar- [fol. 1101] field Boulevard yard (Tr. 2196); no classification in South Chicago yard because of a special move by a locomotive from 108th Street to South Chicago; classification at 55th Street yard (the Garfield Boulevard yard) to 59th Street yard, classification there and transfer therefrom to Homan Avenue yard of the Baltimore & Ohio Chicago Terminal, the point of interchange on that line; classification at Homan Avenue yard; transfer via that line from Homan Avenue yard to Barr yard; classification there; transfer therefrom to Harvey; classification there and industrial switching at industry No. 3, or a total cost of $21.78 as compared with $10.41 for the natural route. (Tr. 2197.) Those are 1926 costs—well, no, I would not say that they were 1926 costs either. They were the costs of the Chicago switching case, which are 1928.

In exhibits 101 and 103 for the two weeks covered by them we had the shipping dates in all instances, the shipping dates only. (Tr. 2198.)

GEORGE J. SHREEVE, duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Am general superintendent of the Belt Railway of Chicago. Have been connected ~~with it for 38 years in various~~ departments, beginning as a locomotive engineer, etc.

Mr. Walter: We will admit Mr. Shreeve's qualifications, Mr. Examiner. Mr. Shreeve knows his business. (Tr. 2190.)

The Witness: I have had experience with road haul train movements as distinguished from switching service. Road haul trains are made up in what is known as station order, so that cars on the head end can be cut off very easily at [fol. 1102] various stations between the yard or station from which the train departs and the station to which it is destined, and the same thing holds good with our switching movements, as far as transfer service is concerned. Trains for local runs are made up similarly, that is, the cars for the first set out are placed next the engine and so forth on until the train is finally delivered at its final destination. We have a locomotive in each case, and a caboose in road haul and transfer service. We have to have the air coupled in both instances, both (Tr. 2200) in road haul and the so called transfer service. We test the cars to see if air is working and the brakes properly functioning with respect to Interstate Commerce rules in both cases. We have train dispatchers controlling movements of all kinds over transfer routes as well as in trunk line service, with train sheets similar to those that are handled in road work. The billing of the cars as to giving train crews information and their destination is similar, comparing one with the other. Bills accompany each car, whether loaded or empty, or whether in switching movement or road haul. (Tr. 2201.) In handling the switching movement in trains such as described, there is no distinction between the interstate and the intrastate, so far as switching or switch movements are concerned. (Tr. 2202.) On a shipment having origin and destination in the district there is nothing to indicate whether it has intrastate or an interstate movement, so far as switching is concerned. In handling a car of freight

such as we have been talking about here in the district between two industries, and the handling of a car between two stations on the roads, so far as the operation and handling of the business is concerned, there is no difference that I know of. There is nothing I can think of that would indicate a difference between the two services. (Tr. 2202.)

[fol. 1103] Cross-examination.

By Mr. Walter:

As far as operation of the Belt Railway is concerned, I have jurisdiction over it. It is owned by 13 trunk lines in Chicago. There is a special arrangement between the Belt and these lines as to method of operating for the account of the individual carriers that own the road, which we have during these depressed times, where we perform some service for them, for which they pay us. This is done with our own power. That service is treated as a one-line haul, as if it was handled by their individual power. There is no change in the tariff arrangement at all. (Tr. 2203.)

I have looked over Exhibit 110. In illustration G in that exhibit the Belt Railway appears as the broken dash line in the diagram. Industry 1 shown on the map is served by the Pennsylvania Railroad, I think, but the Belt line does not reach that industry. We receive a car loaded to that industry at our South Chicago yard, and if going to industry 24 (Tr. 2204) the Pennsylvania Railroad might deliver that car direct from industry No. 1 to the South Chicago yard of the Belt Railway, or it may, depending on the line it comes over, deliver cars in our Clearing yard. (Tr. 2205.) It would be a Belt Railway movement from the time it arrived at the junction point with the Pennsylvania, and we would pay the Pennsylvania for performing the service, pay wheelage from our South Chicago yard to the Clearing yard. Time of day does not exactly determine as between the alternative movements. The volume of business and the importance of the movements of the car and such as that determine that. They might leave a car [fol. 1104] at South Chicago, and if they have a train coming to Clearing they may bring it over, but any rate it is the Belt's obligation, the Belt's expense for handling it, regardless of whether it is handled into our South Chicago yard and from there by Belt crews, or whether it is handled

to the Clearing yard by the Pennsylvania Railroad. We pay the expense. (Tr. 2206.) The Pennsylvania goes to Clearing over the Belt rails. It is a joint railroad, of course, owned, as I explained to you, by 13 different lines. (Tr. 2206.) If a car came from the Pennsylvania Railroad delivered to our South Chicago yard, it would be placed in our inbound records. The Belt, with our power would move it from South Chicago to Clearing and complete the delivery to the industry, but as the car came over the Pennsylvania and was handled to Colehour yard or from industry number 1 to the Clearing yard, we would have a record for the handling of the car by the Pennsylvania into our Clearing yard and we would pay them for the handling, that they did of the contents of the car that distance. That payment is under an agreement entered into by the 13 railroads and the Belt railway of Chicago. The purpose of the agreement is so that we, when we are paid the regular tariff rate, will compensate those lines for the service they performed that should rightly belong to us. (Tr. 2207 2208.) It is no concern of the shipper as to whether the Belt or the Pennsylvania does it. It should be treated as a two line haul. But if the Pennsylvania with its own engine took it to Clearing yard, it would be a 2 line haul because we employ the Pennsylvania to do that part of our work and we complete the work after the car has been delivered at our Clearing yard. We perform all services at all industries on our railroad, not only at Clearing yard, but all of them to the exclusion of the proprietary lines, that have no privilege, no right; under our [fol. 1105] contract they are not permitted to deliver cars to our industries. (Tr. 2208.) As we have something over 350 industries on our line and if we permitted the 13 lines to place the cars they bring for industries on our line, the industries would receive no service, the Belt would receive no service and it would clutter up the operation and make an impossible situation but the operation by the Pennsylvania in using our main line from South Chicago to Clearing does not clutter up the operation. (Tr. 2209.) From my standpoint, there is a reason why the Pennsylvania should not deliver direct to you at the South Chicago yard because there is an industrial crew doing the work on that branch. When it comes out at the junction with this branch line that runs to industry No. 1 they connect with their main line just a short distance from the Colehour yard.

If they have one car for the Belt Railway in this train they may have 2 or 3 cars for the Indiana Harbor, 1 or 2 for the Rock Island and some more for the New York Central, etc., (Tr. 2210-2211) and for them to cut off and leave the cars that they have gathered in this territory and run with 1 car to our South Chicago yard and with 1 to the Rock Island and 1 or 2 down to Colehour yard would be a waste of time, but the way they do now, they gather these cars all together, taking them to their Colehour yard where they are switched and those going to Indiana Harbor Belt are put on Indiana Harbor Belt tracks, those that go to the Baltimore & Ohio Terminal on Baltimore & Ohio Terminal tracks and those that go to the Belt go on certain tracks and those to the Rock Island on certain tracks and then there are transfer crews after those trains are made up not in 1 or 2 car cuts but cars that have been accumulating all day and that are making a run to the Belt at a given time and Rock Island at a given time and in that way they conserve their power and would save cluttering [fol. 1106] up our railroad by running light power back and forth to the various yards. (Tr. 2211.) I do not know what 108th St. yard is, (Tr. 2211) but taking the car from industry I shows the car at 108th St., and also going into the South Chicago yard so far as the Belt Railway is concerned it would be entirely agreeable to me to receive that car at the South Chicago yard and remove it to the Clearing yard and that is the normal route after we get it, and as to whether the unnatural route socalled takes the car to South Chicago yard or whether the natural route takes it to Colehour yard is a matter about which I express no opinion and have no knowledge. (Tr. 2213.) In any event, our service is just the same whether it is intrastate or interstate. We get the car at the same place and the handling is the same. There are many places where these various lines, trunk lines and switching lines interchange with each other but I cannot give you the number of interchange points we have with other lines including proprietary lines, but I think about 32. (Tr. 2214.)

There is no difference in handling the state traffic and the interstate traffic via our line and there is no difference in distances in handling the two kinds of traffic on our line because it is all in the state of Illinois. We are a part of a 2 line haul that does reach Indiana, as a part of a through route from points in Indiana. I imagine we handle

cars that originate all over the United States, moving in interstate commerce, but as to switching traffic, we do not handle it outside of the state. Taking this route G, if we receive the car at South Chicago, handled it to Clearing yard there would be no difference in the circumstances and conditions of the handling of a car which might have been loaded at industry No. 1 in Illinois and 1 loaded in Indiana but handled by us from the same point to the same point, so far as their handling is concerned. I meant that so far as handling is concerned there was no difference between [fol. 1107] the state and interstate traffic. (Tr. 2216.) But taking a car at South Chicago coming from Indiana, that we handle 20 miles on our line, would be a more expensive service than one of just going to Clearing, and we have the same difference between the intrastate cars as between the state and interstate cars, as far as we are concerned, speaking of our own railroad, and my testimony is limited to the handling by our road. (Tr. 2216-17.) We have a dispatcher for each 8 hour trick. They have nothing to do with industrial switching, only where the industrial switch engine goes on the main track; they do then. The dispatcher must know about that to keep the track clear, but so far as to directing their movements at the industries, he has nothing to do with it, the yard master takes care of all of that. (Tr. 2217.)

Cross-examination.

By Mr. Hufsmith:

Referring to illustration "G," the car moving from industry 1, we may receive that car at the South Chicago yard or we may receive it at our Clearing yard. When we receive a car at the South Chicago yard from the Pennsylvania, we do not know anything about it until we get it at South Chicago. (Tr. 2219-2220.) We have sufficient facilities in our South Chicago yard to handle all cars that might originate from industry No. 1. Pennsylvania is one of the group of joint owners of the Belt Railway. (Tr. 2220.) We have conferences quite often regarding bettering of the service; that is one of the things I explained here but on account of the slowing up of business, we have now arranged that we will take cars from the Pennsylvania to any point on our line. (Tr. 2221.) I don't think

we ever had a conference with the Pennsylvania Railroad to determine policy of handling cars moving from industry No. 1 to industry No. 24 for example. We had a meeting though of all the terminal superintendents not a month ago. [fol. 1108] (Tr. 2221.) We did not discuss at any of the conferences whether or not it might be advantageous or profitable to both of the carriers to do the switching at the South Chicago yard rather than take it to Colehour yard which is marked as the natural route in illustration "G". There are 13 carriers that own an equal interest in the property of the Belt Railway of Chicago. (Tr. 2222.) The Belt Railway's purpose is to serve as a switching facility to serve industries located on its line and interchange cars between all trunk line carriers that enter Chicago, (Tr. 2224) and it handles an interchange business between all lines. It is a connecting link between all of the trunk lines and serves about 350 industries. (Tr. 2225.) From my observation and experience in Chicago, I would say it would be an utter impossibility to run all the trunk lines to the various industries in the city of Chicago and that is why we have the Belt Railway in order to make a connecting link or connection between the various lines, in fact, between all lines. (Tr. 2226.) About a month or 6 weeks ago, we had a conference with the operating officials that is the superintendents of the 13 carriers with respect to dispatching this traffic over the Belt Railway to the connections of the 13 carriers. (Tr. 2226-2227.) Since June or July, 1915, we have been receiving from the Pennsylvania, moving over the black line, as indicated in illustration G. (Tr. 2228.) Starting with the first illustration in Exhibit 110, we do not participate in the movement illustrated by A, B, C, D and E. We participate in the movement illustrated by F, and the broken black line, the portion of the move handled by the Belt. (Tr. 2229.) We have been handling cars via that route indicated by a broken black line ever since the time I mentioned, some time in 1915. We do not participate in traffic illustrated by H, but do in J and have handled via that route since [fol. 1109] 1915. We do not participate in illustrations K, L, (Tr. 2230) M and N. The situations indicated in Exhibit 110 in which the Belt Railway participates have

not changed so far as the Belt Railway movement is concerned for the period I have indicated for some 15 years. (Tr. 2231.) I am the one who called the operating officers together for the conference with the 13 carriers, (Tr. 2231) and have suggested changes but not as to these movements we have been discussing. I know a lot of other changes though in the way of improvements depending on the business conditions. (Tr. 2232.) There has been no change in the method of operation other than the consolidation of work in order to economize, as far as our railroad is concerned and our connections with various railroads which is, I think, quite stationary. The Chicago Northwestern in the last few years has made 1 change whereby they take their road haul business at Proviso and there switch business at 40th St., but other than that we have made no change in our points of interchange with any of the lines. (Tr. 2234.) If we have a car going as an industrial move and at the same time one available going in line haul movement, the destination of the line haul car does not alter the progress as to the routing of the industrial movement. (Tr. 2234.) If an industry has 2 cars to move, 1 in line haul, moving to the classification yard on the left and 1 to an industry on the right, the fact that the 2 cars are there to be picked up does not have anything to do with the movement of either one. They would both be picked up by the same crew and taken to the base yard where we make up our trains and distribute our traffic from the base yard. (Tr. 2235.) The movement of a car from 1 industry to another on our line does not always go to the classification yard. (Tr. 2236.) It might move from 1 industry to another.

[fol. 1110] Mr. Hufsmith: Now, my point is would this car be picked up, the 2 cars, and taken to the classification yard and then the car brought back to the industry by virtue of the fact that there was a car there that was destined to the classification yard going out in line haul.

The Witness (continuing): If I follow you, I do not know of any case where a movement of that kind has been made on our line.

We make any movement in order to make a short cut on our line. (Tr. 2236.) We always do that when industries call on us to do them a favor, moving cars and have moved

cars out of the regular routine of handling. It is done nearly every day to accomodate somebody, but I am talking now in answer to your question of the regular flow of traffic the natural way it was moved. (Tr. 2237.) If an industry had 2 cars destined to Indianapolis, and 5 cars for Sioux City, there would be no difference in the way they would be picked up. (Tr. 2237.) They would all be moved with the same crew and go into the base yard but they may take different routes, 1 car might go South and the other North, but they would go into the same base yard and there be put into trains moving in the direction that the cars are moving in; it would be the route on which they were billed, and the direction in which they would be going. They would all go into the same base yard, and then be put into different trains. Cars to Indianapolis might go over the Monon and the cars to Minneapolis and other points might go over the Chicago & Northwestern, the Chicago, Burlington & Quincy, and so on. (Tr. 2238.) In a movement from industry No. 24 going to the Pennsylvania, it would in that case be delivered to the Pennsylvania and [fol. 1111] put in a Pennsylvania train in our clearing yard and handled by the Pennsylvania from there to their Colehour yard. (Tr. 2239.) As far as our switching service is concerned, as between the same two points on our line, we have no difference in handling between the interdistrict and that which we turn over to a connection. The cost of fuel differs in the different classes of service. It varies somewhat. It varies as to the character of the engine and the character of service by the engine to some extent. (Tr. 2240.) An industrial car gets much more handling. A car to an industry gets very much more handling than a car moving between 1 road and another. The fuel consumption per hour by an engine in a given service does not vary a great deal per hour. (Tr. 2241.) We have transfer engines all about the same class, the same size and they burn about the same amount of fuel per hour or per car and we have other locomotives that do industrial work. The engine from South Chicago to Clearing yard would not use approximately the same amount of coal whether it was taking one car or 10. (Tr. 2241.) There is a difference in engine coal consumption between the handling of 1 car and 10. I cannot give you the approximate difference but there is a little difference. (Tr.

2245.) I think an engine would consume a little more coal handling 10 cars as against handling 1, but just how much, I am not in a position to state, but it would not be 10 times more than the handling of 1 car or anything like that. (Tr. 2245.) We have got the locomotive to handle anyway. We are running 5 trains per day between South Chicago yard and Clearing yard, and we could handle a lot more cars per train than we are handling and could put them all in one train if it were not for the connections and the demands that are made by the industries for the service. (Tr. 2246.) A special move would be a car that we would take and handle for some considerable distance that *that* was [fol. 1112] desired by an industry or a consignee and we would charge for that, but the moves I mentioned are not special. In 1928, we were running twice as many trains between Clearing and South Chicago as we are running now. We now run about 60 or 65 crews daily and in 1928, 105, 110 and 115. We have 5 men to a crew and they run for about the same length of shift they did in 1928. (Tr. 2247.) The volume of business has been entirely responsible for that decrease. The output per crew is less now than it was in 1928 and figuring this last 10% reduction, the wages are less but I do not know whether coal costs more or less, as I have nothing to do with the purchasing. (Tr. 2248.)

Cross-examination.

By Mr. Cardy:

Illustration J is the only knowledge I have indicating that since the higher interstate rates have been effective it has had the effect of confining movements originating in Illinois to intrastate routes. (Tr. 2249.) That is the first knowledge I ever had of anything of that kind, (Tr. 2249) and not being familiar with what the other roads were doing, I cannot answer whether or not it has materially shortened the mileage of the movement on the intrastate traffic. (Tr. 2249.) As to whether or not it would be more difficult and more costly to handle via the black line than via the red line as shown here, I do not know anything about the route of the Pennsylvania and the Indiana Harbor Belt. I know it costs money to handle cars any distance. (Tr. 2249-2250.) Prior to January, I did not know

the percentage of traffic originating in Illinois for Illinois destinations that was handled through Indiana as compared with the amount of traffic that is handled today. (Tr. 2250.)

A. E. JACOBY, was sworn and testified as follows (Tr. 2251):

[fol. 1113] Direct examination.

By Mr. Davis:

I reside in Chicago and am train master of the Pennsylvania Railroad and have been connected with that road 38 years, 32 years in the operating department. I have had experience in operating both line haul trains as well as switching movements; road trains on the Fort Wayne division, the Logansport division and the run over the Chicago Terminal division. (Tr. 2251.) My experience in the operating department has been entirely on the Chicago Terminal division, handling transfer freight from 1 industry to another in the district. The transfer trains consist of cars moving interstate and intrastate. Road haul movements and swich business are included in the same trains. Transfer trains, yard to yard movements are complete trains with a caboose. They are made up with the air coupled and in working order and are handled both under the jurisdiction of yard masters and train dispatchers. (Tr. 2252.) We do not limit one transfer train to state movements and another to interstate. We have both classes of cars in the same transfer movement. (Tr. 2252.) Taking Exhibit 110, the portion of the Pennsylvania railroad shown in red in Illinois, along which are indicated Industries 1, 4 and 12, is the portion of our road known as the Calumet River Railway along the East side of the Calumet River. It is served by power and cars working out of Colehour yard which is just over the line in Indiana. The state line crossing the lead to the yard at the West end. (Tr. 2253.) Cars to and from industries on the Calumet River Railway are normally handled by using the main line of the Pennsylvania to the junction with the Calumet River Railway at what is known as River Branch Junction, adjacent to the bridge crossing the Calumet

River near South Chicago. A car from industry No. 1 directed to industry No. 2 on the Baltimore & Ohio Chicago Terminal would normally move from the industry to Cole-
[fol. 1114] hour yard with the industry engine coming to Colehour yard at the conclusion of its tour of duty. After classification in Colehour yard for movement to East Chicago, the car would move via Clark Junction to that point where it would be delivered to Baltimore & Ohio Chicago Terminal for further movement in the industry. That is the normal route.

As to the route shown in red, in order to keep the car from crossing the state line, it is necessary to move the car with the industrial engine that brings it from the industry to a set of tracks at South Chicago involving special service performed by the engine and crew on its way to Colehour yard at the expiration of its tour of duty. The car is later taken at South Chicago by transfer to Garfield Blvd., yard, where it is classified into a train. (Tr. 2254) for 59th St., and again classified into a train for the Baltimore & Ohio Chicago Terminal and is later delivered to that line at its Homan Ave., yard and that company handles it from there. (Tr. 2255.)

Taking illustration A, so far as the Pennsylvania railroad is concerned, it has no yard at South Chicago. We have a track there commonly known as High Five, ordinarily used for storage purposes or for the accommodation of cars for industries on the Cummings branch; but with present volume of business, it has been possible to clear that track and use it for setting off and picking up cars to keep them from crossing the state line into Indiana. This track has not been of sufficient size to handle all the cars in some cases and in the event they have been set off and picked up in what is colloquially known as the "tailor" track along the Calumet River Railway just a short distance from the Junction point of the main line. (Tr. 2255.) 108th St. yard is one used for serving the numerous indus-
[fol. 1115] tries from River Branch Junction to Hegewisch, comprising the Calumet River Railway. When there is sufficient traffic to demand it, trains are moved from Colehour to 108th St., yard where they are classified and taken to industries or industrial districts along the Calumet River Railway. That would be an interstate movement. There are four main tracks from Colehour to Garfield

Blvd., as shown on the map: As to industry No. 1 the normal movement after entering upon the main track at River Branch Junction would be to follow the current of traffic on main track No. 1 to Colehour. (Tr. 2256.) A switch engine or industrial engine taking a car ordered by a shipper to be handled in state traffic in going from River Junction to South Chicago tracks or yard would after entering on the main track at River Branch Junction, proceed westward on track No. 2 to cross over a little distance West of the West end of the track designated as High Five, then cross over at that point and return and set off the car at High Five and proceed to Colehour No. 2 track is a West bound freight track. In taking the car to South Chicago to hold the traffic within the state, the industrial engine in handling the rest of its load, would do the most economical thing and that is to set the car out at High Five, South Chicago, on the trip to Colehour, that is, set the car out at South Chicago and continue on the trip to Colehour. (Tr. 2257.) Taking industries 6, 8, 9 and 11, they are really all located at one plant and are ordinarily served from the East end, from the direction of Colehour by crossing the Indiana-Illinois state line. That is the normal and economical way to serve that plant on movements therefrom to Blue Island. To avoid crossing the state line, the engine will go to a point near 103rd St., West of the industry by using West bound passenger main track No. 4 and there enter the industry and perform the switching, taking cars [fol. 1116] out at the same gateway through which they entered and running thence to the South Chicago yard, or as stated, High Five, where the car is left, the engine then returning to Colehour. (Tr. 2258.) This is special service. Later, that car is picked up by the transfer run between Colehour and Garfield Blvd., yard, following the unnatural route. That movement described from those industries to South Chicago is not normal. The normal movement would be entering the plant from the Indiana side as I described it, pulling cars into Colehour yard classifying them and when left at South Chicago, the industrial locomotive goes back to Colehour and a transfer train operating between Colehour yard and Garfield Blvd., stops at South Chicago and this car or cars are picked up and taken to Garfield Blvd. (Tr. 2259.) After reaching Garfield Blvd., they are classified and put in a train for 59th St., moved to that

yard, again classified into the local for Dolton and moved to that yard, where again classified and put in train for Blue Island yard and the Indiana Harbor Belt, where delivery is effected, thus ending the Pennsylvania Railroad connection with the car. (Tr. 2260.) Take illustration C, the cars would be handled to South Chicago yard and picked up by the transfer train working out of Colehour to Garfield Blvd., yard, the same as described in illustration A and when it reaches Garfield Blvd., after classification, it is taken to the 16th St., yard and that transfer delivers it to Western Avenue where it is turned over to the Burlington. (Tr. 2260.) In illustration C you will notice that the natural route and the unnatural routes are the same, with the exception that to keep the car out of Colehour it is necessary to give special service from River Branch Junction to South Chicago and again special service in picking it up from transfer run to reach Garfield Blvd. (Tr. 2261.) If it was not for the request or order of shipper to keep movements within the state, if originating at [fol. 1117] industries 1, 12 or 14, the industrial locomotive would take the cars and direct to Colehour yard, where they would be classified and put in transfer train going to Garfield Blvd., yard. Illustration D is a single line haul, both industries No. 1 and 18 being located on the Pennsylvania railroad. The socalled unnatural route shown in red is likewise the natural route except to keep the car from entering Colehour yard. We resort to extra or additional service in handling the car from River Branch Junction to South Chicago yard setting it off there and later picking it up at that point for Garfield Blvd. (Tr. 2261.)

Illustration E is substantially the same movement between two industries, both located on the Pennsylvania railroad.

Illustration F concerns movement of a car from an industry on the Pennsylvania railroad in Illinois immediately West of the state line to an industry in South Chicago district on the Belt Railway. Under normal handling of that car we would reach the industry from the West end across the state line and take it back to Colehour yard for classifying it into a train for Belt Railway Commercial Avenue, South Chicago. To keep such cars from crossing the state line, we resort to the special service of using the high speed West bound passenger main track to 103rd St.,

entering industry at the west end, (Tr. 2263.) involving considerable more expensive switching operations and return from industry to the main track at the same point, running thence to South Chicago from which the cars are later moved to Commercial Ave., yard of the Belt Railway at South Chicago, where the Belt handles it from that point to the industry. If we did not have to keep it intrastate, the movement would be direct from Colehour yard into Commercial Avenue yard and we would enter the Belt tracks at a connection adjacent to the Calumet River just at the West side of the bridge. The movement from South [fol. 1118] Chicago yard as shown here to the Belt Railway is a special or separate movement. We have no service to and from this so-called South Chicago yard other than that necessitated by keeping the cars intrastate. (Tr. 2263.) It is a special service but is not asked for by the shipper. It is not the ordinary service; it is extraordinary service. During a considerable portion of the period from December 10 to date, we have had to have extra engines to make the numerous special moves and the greater portion of the time is concerned in making them, although in addition to the special engines, these special moves have been made as already described by engines otherwise in service enroute to and from Colehour yard. (Tr. 2264.) I am informed the New York Central serves industry No. 8.

As to illustration F, assuming the New York Central serves industry No. 8, the movement of this delivery on the Belt railroad, the interchange being at Englewood; both the industry and Englewood yard are in the State of Illinois. Englewood on the New York Central is right adjacent to the Englewood station on the Pennsylvania railroad. (Tr. 2265.) It is 7 or 8 miles from South Chicago either via the Pennsylvania or the Belt as shown by illustration F. to Englewood on the New York Central. As to Illustration G, covering movement of Pennsylvania to the Belt, we transfer to the Belt both at Commercial Avenue yard and at Clearing. Delivery at Commercial Avenue yard was originally set up to carry cars which the Belt interchanges with various connections through that yard that is in the South Chicago district; and also to carry cars for industries on the Belt in the South Chicago district as far North as 83rd St., the object being to provide economy of service both for the Pennsylvania Railroad and the Belt

(Tr. 2266) though there are other cars delivered in the Commercial Avenue yard of the Belt Railway. (Tr. 2267.) For example, the Pennsylvania makes delivery of a pretty [fol. 1119] heavy train into Commercial Avenue yard at South Chicago every night about 1 A. M., carrying not only cars for that district, but through routed cars for industries on connecting lines and industries on the Belt. The delivery is made to connect with the run which the Belt has out of Commercial Avenue early in the morning, which makes connection with the morning trains of the Western railroads. Commercial Avenue yard is the same as the illustration shows as South Chicago yard on the Belt railway. Whether we deliver a car to the Belt at the Commercial Avenue yard or South Chicago or Clearing, the natural route would be to take the car from industry No. 1 into Colehour yard, which is East of the Indiana-Illinois state line. If it had been taken to Colehour yard, with the engine returning from industry No. 1, it is possible the car would have been transferred by the Pennsylvania Railroad engine and crew to Clearing. (Tr. 2268.) As we have at least 2 trains per day from Colehour to Clearing and sometimes more; but to keep the car in state traffic, it was necessary to make the moves. I have described on some of the other illustrations, of taking the car to South Chicago on the Pennsylvania and bringing it back to the Belt Railway at Commercial Avenue yard. (Tr. 2269.) Illustration H involves movement between the Pennsylvania and the Chicago & Illinois Western, showing an unnatural route which really is coincident with the natural route, so that the only thing involved is the extra service in handling the car from the industry to High Five at South Chicago, picking it up at that point and taking it to Garfield Blvd., yard in the through transfer. (Tr. 2269.) Though the unnatural route in this illustration and a few others is approximately 3 miles shorter than the natural one, (Tr. 2269) the service over the natural route is less burdensome than over the unnatural one in that it involves less engine hours, due to the conditions described, requiring the loco- [fol. 1120] motive doing the industrial work at industry 12, etc., to run to South Chicago, out of its natural route. (Tr. 2270.)

Illustration J covers movement of a car from industry 026 to a point on the Michigan Central. Delivery is made

to the Belt at Kensington. As described in connection with another illustration, the switching of this particular industry was attended with a good deal of difficulty and with increased engine hours on account of serving it from the West end of it and off the passenger main tracks instead of the East end of the industry which is right at Colehour yard. The movement being across all four of the main tracks to South Chicago yard, all of which has been touched on before. (Tr. 2270-2271.) The normal movement would be to take the car from the industry direct to Colehour yard because leaving the industry at the East end, we are at the cross over leading right into Colehour yard. At this point the car would have been classified for delivery to the Indiana Harbor Belt at Michigan Avenue just about a mile beyond the junction point of the Indiana Harbor Belt and the Pennsylvania Railroad at Indiana Harbor.

Illustration K deals with the Pennsylvania and the New York Central. This illustration is a little different from any one of the preceding ones heretofore discussed for the reason that it involves movement for an industry on the Calumet River Railway (industry No. 1 to one located on the New York Central at 79th St., also indicated as Industry No. 1. (Tr. 2271). The normal movement of that car would be to bring it with the engine, serving the plants into Colehour yard for classification into a train for the New York Central. The latter handles interchange between its line and the Pennsylvania in both directions, that is, delivering to the Pennsylvania at Colehour yard and picking up the train for return movement to its Engle- [fol. 1121] wood yard. The car would have been delivered to the New York Central in that manner at Colehour yard and, of course, would have crossed the state line twice. To avoid that, the car was handled from the River Branch Junction to High Five at South Chicago, left there by the engine returning from the plant to the Colehour yard. Another movement was made from there to the New York Central by crossing the passenger tracks entering the Schwill Malting Co., at 103rd St., passing the West end of the Schwill plant and entering upon the tracks of the New York Central where the car was left for it to pick up. (Tr. 2272.)

Illustration L is similar to K, but the industry involved is one on the main line of the Pennsylvania railroad at

about 103rd St., just a stones throw West of the Colehour yard. The normal movement would be to take that car and bring it to Colehour yard for classification into a train for the Indiana Harbor Belt, delivering it at Michigan Avenue yard at Indiana Harbor. The movement given it was a pick up at the industry and thence westward to South Chicago where it was later picked up by a transfer. (Tr. 2273.) That movement should be reversed. It was from industry 28 to industry 29. (Tr. 2273.) But that does not make any difference. (Tr. 2274.) It does not make any difference as far as the elements of service are concerned on the Pennsylvania Railway, because the car had to be classified at Garfield Boulevard yards, placed at the head of the transfer moving to Colehour, set off at South Chicago yards, and thereafter handled specially by an engine sent from there for that purpose, and taken and placed on the industry siding near 103d Street, which is the reverse of the movement as stated and described, but we have just as much additional engine service as the other movement would have involved. (Tr. 2274.) If the car had not been handled that way the Indiana Harbor Belt would have given [fol. 1122] it to the Pennsylvania Railroad at Indiana Harbour at the point of interchange of those two roads at that yard. (Tr. 2274.) The interchange between the Indiana Harbor Belt and the Pennsylvania at Indiana Harbor is at the junction which is north from the Michigan Avenue yard about a mile. (Tr. 2274.) We take the car at that point and bring it to Colehour and from Colehour would make delivery with the industry engine involving only a few minutes' work because of the nearness of the industry to the yard. Illustration M indicates movement from industry No. 30 to 31. The industry being located on the Pennsylvania at Englewood, the natural route would be for the Indiana Harbor Belt to deliver to the Pennsylvania at Indiana Harbor, from which we would bring it to Colehour and thence move to Garfield Boulevard and place at Englewood. To keep the car from crossing the state line it was delivered at Dolton yard on the Panhandle, where classified in a train for 59th Street, and after classification at 59th Street moved to Garfield Boulevard and thence to Englewood. (Tr. 2275.)

Illustration O refers to movement from industry No. 1 on the Calumet River Railway branch of the Pennsylvania

to industry No. 35 on the Baltimore & Ohio Chicago Terminal west of its Homan Avenue yard; normal movement for the Pennsylvania would be to bring the car to Colehour yards with the engine serving the plant, and thereafter move it to East Chicago via Clarke Junction for delivery to the Baltimore & Ohio Chicago Terminal for further handling. (Tr. 2276.) To avoid crossing the state line the car received special handling from River Branch Junction to South Chicago, there picked up by transfer and moved to Garfield Boulevard yard, where it was classified for delivery to 59th Street over the Englewood connecting railway and thence moved in a transfer from 59th street yard to Homan Avenue yard of the Baltimore & [fol. 1123] Ohio Chicago Terminal. (Tr. 2276.) The normal route, as is stated in the exhibit, is the natural route, the route that the traffic moves by reason of volume and economy, and am referring to road haul traffic now. We must take of all classes of traffic, inasmuch as it all moves in the same trains and through the same gateways. The switch business and the other business moves altogether in the same trains. (Tr. 2277.)

Cross-examination.

By Mr. Hufsmith:

At the Pennsylvania Dolton yard the Indiana Harbor Belt has a connection for Blue Island, and the Baltimore & Ohio Chicago Terminal for the Barr yard, but it is not now in use. There is such a connection but it is not now in use. (Tr. 2278.)

Cross-examination.

By Mr. Walter:

As applied to switching in the Chicago district, it generally devolves upon the train master on most roads to set up the interchange arrangements and the program of movements as to frequency, etc. (Tr. 2278.) I do not mean arranging for interchange with various lines in the district, exactly. I would say interchange arrangements as a general rule, when not dictated by absolute necessity, are set up by special agreements between the interested roads. It is largely a matter of agreement between car-

ries to resolve their conflicting views as to when they *they* will interchange and at whose convenience. Not long ago the interchange between the Rock Island and the Pennsylvania was being made at three different places, which was discontinued at all three and passed through Clearing, each road being an owner road of the Belt Railway, and they were thus enabled to make a direct interchange with each [fol. 1124] other through that medium, being done in the interests of economy. (Tr. 2279.) This was done within less than the last four years. (Tr. 2279.) I do not know that many of these changes have been made in that period. It is a process that goes on as we are improving the service at every opportunity. That is upon the normal course of things, but changes of that nature have been quite rare and I cannot think of any other at the present moment. This change, as far as the Pennsylvania Railroad is concerned, did not result in any economies. As to the Rock Island, I could not say. Only the Rock Island and our road were interested in this change. (Tr. 2280.) I imagine it did help the Rock Island, because that road felt that it did at the time. I am informed that the Rock Island felt it saved some money or was economical. (Tr. 2281.) Based on that information I will say that it did result in economy to the Rock Island Railway. (Tr. 2281.) I presume the information was correct. (Tr. 2281.) The Pennsylvania is an important switching line in Chicago, handling considerable intra-switching district business. On page 1 of Exhibit 110 there are three cars shown that were not handled by the Pennsylvania Railroad, being line numbers 27, 28 and 29. No, there were but two. (Tr. 2282-2283.) All cars on the next page were handled by the Pennsylvania and all but one on the next page, item 90; all on page 4. Out of the 856 cars shown as illustrative of carload movements only 3 of them were not handled by the Pennsylvania. The Pennsylvania is involved in every movement but one shown on the map of all the illustrations from A to O. (Tr. 2283.) The Calumet River Branch is a branch of the Pennsylvania Railroad, extending along the east side of the Calumet River from a point near Hegewisch to the [fol. 1125] junction of the main line of the Pennsylvania Railroad at or near South Chicago. On that line is the Republic Steel Corporation, the Marblehead Lime Company, the General Chemical Company, the Keystone Ele-

vator, the Norris Grain Company, the Valley Mold & Iron Corporation, Interlake Iron Corporation, Federal Furnace plant, and a few smaller industries. In establishing a regular service from these industries, even though the movement was heavy enough (Tr. 2284) to warrant it without going through Colehour, we would do just what we have done; that is, involve the additional engine-hour service that I have mentioned in my testimony, which has aggregated 8½ hours per day, with no reduction in the other direction. The state line crosses over the west entrance to Colehour yard, and if that yard had been located a little north there would have been none of this change of service entering into it and the shipments would have continued to move into and out of Colehour yard. (Tr. 2285.)

Mr. Vivian's statement as to illustration A, that a car from industry No. 1 would have industrial switching, is correct. (Tr. 2285.) It is handled by the industrial switch engine into South Chicago yard today, but there must be a classification at 108th Street in order to set the car off at South Chicago while the engine is en route to Colehour. The classification at 108th Street is simply a separation of the cars to be set off at South Chicago yard and putting them on the head end so that they can be set off with the minimum delay. We divide the train into two classifications of cars, those that are left at South Chicago and those going into Colehour. That is the only form of classification we have at 108th Street. (Tr. 2286.)

The only industries on the Calumet Branch that do their own switching and have their own engines are the Interlake Iron Corporation and Federal Furnace branch. In switching they do not group the cars as to those to the Illinois [fol. 1126] destinations and those to the Indiana destinations; they group cars for the Indiana Harbor Belt and for the Pennsylvania Railroad, and all cars for the Indiana Harbor Belt would go southward. The cars would be divided, one bunch being all Indiana Harbor Belt, and all of them except those going to Illinois destinations would move through Colehour; that is all cars routed for our line would normally move through Colehour yard except those going via our line to points north and west of River Junction that require intrastate movement. (Tr. 2287.) In mentioning the Indiana Harbor, by agreement it has rights to reach the industries on the Calumet River Railway. They

do not go in there with their engines because the Pennsylvania performs that service jointly for the two lines because that is economical. There is no connection between the Baltimore & Ohio Chicago Terminal at 59th Street and our yard at 59th Street, so it has to go on to its Homan Avenue yard and go back about 9 or 10 miles. That is the normal way of doing business. (Tr. 2288.) The only reason for the change in routing shown on illustration A is the cost to the shipper. (Tr. 2289.) There are about three industries there which are located between the New York Central and the Pennsylvania main tracks in Illinois, just west of the state line. They are the only ones in that territory adjacent to the New York Central which are reached by both lines. There are no industries there reached only by one of the lines but which, by the installation of a track, could be reached by the other. (Tr. 2289.)

I heard Mr. Shreeve's testimony regarding illustration G and agree with his statement as to the manner in which the operation is performed. We always have two trains per day going to Clearing from the South Chicago yard, and quite frequently three. Regarding the consolidations [fol. 1127] of those trains with the Pennsylvania and the Belt so that the latter would not have 25-car trains, our trains are pretty heavy, running as high as 125 cars per train and as low as 60, and there is the fullest cooperation between the Belt Railway and the Pennsylvania (Tr. 2290); because when the volume of west-bound traffic flowing through Clearing is in excess of our ability to handle with two trains, the Belt is always very glad to take that overflow at Commercial Avenue. I have no information as to the number of cars the Pennsylvania hauls for the Belt, for which the Belt pays at the rate it is supposed to collect, and have no way of telling that, but the Belt Railway records would show that; at least I assume they would. (Tr. 2291.) If we were operating the Chicago terminals and had sole control, the movement shown in illustration J between industry No. 26 and industry No. 27, that is, from the Updike Grain Company to A. Schwill and the Kensington elevator, whether moving via the red line or the other, would make very little difference so far as the Pennsylvania Railroad is concerned. It would make very little difference which way it moves, whether we deliver the car to the Michigan Central by way of the Belt of Chicago or by way

of the Indiana Harbor Belt; service is practically the same in both cases. The distance from industry 26 to the Belt Railway Company yard is about 2, perhaps 2½ miles, and if the Pennsylvania took it to the intersection just north of the Michigan Avenue yard where we turn it over to the Indiana Harbor Belt, it would be about three times as far. (Tr. 2292.) Whether we haul it 2 or 2½ miles or the 9 miles' distance, it does not cut so much figure. The cost of the service involves a good many factors other than distance. One of them is volume. As to distance being a minor fac- [fol. 1128] tor generally speaking, throughout the district, I would agree with you that the most circuitous movements might possibly be the best movements, the most economical movements, in certain cases. (Tr. 2293.)

Taking the Belt Railway haul into Chicago and as to whether that was preferable to the movement from the Indiana Harbor interchange all the way around over to Gibson yard and then turning it over to the Michigan Central to take it into Kensington yard, involves a knowledge of operations on the Indiana Harbor Belt and the Belt Railway regarding which I should hesitate to speak, and I do not know that they would take it through the Michigan Avenue yard. I cannot say how the Indiana Harbor Belt handles them; I cannot answer the question. If the Pennsylvania received them we would ordinarily take them to our first yard and there classify them and I would expect the other lines to do the same thing, but I do not know. I could not say positively. But having these things in mind, I cannot say that the movement by the Belt Railway through South Chicago yard to Kensington Avenue yard would be a much more economical movement, as indicated by the exhibit here, than to take it around the black route, because there would be so many factors involved and my knowledge of the operations of the Belt Railway in the district are so limited that I cannot answer the question. (Tr. 2295.) In the last three or four years there has been very little change in switching service in the district that would affect the service and the cost. (Tr. 2295.) The volume of business has slumped tremendously. Wages have been reduced. Supplies are out of my line. (Tr. 2296.)

Examination by Examiner Faul:

My understanding is that these so-called natural or nor-
[fol. 1129] mal routes described in each of the illustrations shown in Exhibit 110 are in each instance the most economical route, and I do not say it is the natural route simply because we have been handling traffic that way for the last ten or fifteen years. I think it is in fact the most economical route, taking into consideration all the factors (Tr. 2296), even though the distance is 10, 15 or 20 miles longer. It frequently happens that we can afford to go a little out of our way to gain economy, just as an automobilist will go out of his way to get on a stone road and keep on a stone road.

Recross-examination.

By Mr. Walter:

As to illustration J, I said that so far as the Pennsylvania Railroad is concerned, there is no difference in practical operation, there is no difference in time consumed as between the red route and the black route, and there is no difference in expense involved, whether we deliver the car to the Michigan Central via the Indiana Harbor Belt or the Belt Railway of Chicago, but as to the expense involved, however measured, after the car gets to the road beyond the Pennsylvania, I cannot answer that question. I do not know as it makes any particular difference as far as the Pennsylvania is concerned which way they move it. (Tr. 2298.)

Mr. Walter: All right. In so far as you are concerned, it would not make any particular difference so far as the Pennsylvania is concerned whether it is red or black, and you say you do not know what it is as to the black, then you cannot tell us whether it is more economical by the red line than it is by the black; is that not a correct summary of your statement?

The Witness: Yes, you can take it that way. (Tr. 2299.)

[fol. 1130] Cross-examination.

By Mr. Shafer:

In referring to illustration B, my statement that the so-called natural route was the most economical route was

so far as the Pennsylvania is concerned. My answer would be the same in connection with illustration O.

Examiner Faul: We will take a recess at this time until 9:30 A. M. tomorrow, May 3, 1932. (Tr. 2299.)

Pursuant to the adjournment, the hearing reconvened at Chicago, Illinois, May 3, 1932, at 9:30 o'clock A. M. (Tr. 2300.)

A. E. JACOBY resumed the stand and testified as follows:

Cross-examination continued.

Mr. Walter:

Referring to Exhibit 15, an official map of the Chicago district, the line of railroad marked thereon "(Pa.-IHB) S. C. & S. (Pa.)" leading to Colehour belongs to the Pennsylvania Railroad and is operated by it exclusively. The line of railroad immediately to the west, going through Hutchinson and Clayburn, belongs to the Pennsylvania Railroad, but the Indiana Harbor Belt has rights to use it under agreement. The Indiana Harbor Belt does not do any switching to and from the industries on that line. The Pennsylvania does that at the industries jointly for the Indiana Harbor Belt and the Pennsylvania. If the Indiana Harbor Belt takes a car from a yard on that line to a point on its own line, it would be a one-line haul, even though the Pennsylvania took the car from the industry to the yard. (Tr. 2301.) And when it moves from a point at an industry on that track via the Pennsylvania to a point [fol. 1131] on the Pennsylvania, that is also a one-line haul. It is the track I referred to yesterday as the Calumet River Railway. Beginning at the north end and continuing to Hegewisch, the first industry at the west end, on the Calumet River line, is the Norris elevator, then the large industries follow in this order: Chicago Shipbuilding Company, Marblehead Lime Company, Keystone Elevator, a foundry concern, the name of which I do not now recall, then the Interlake Iron Corporation, Federal Furnace branch, Republic Steel Corporation (Tr. 2302), Prest-Coke Company, and the General Chemical Company. There are

also some smaller industries. The Indiana Harbor Belt takes loaded cars from the 108th Street yard for each and every one of those industries named, to points in the Chicago switching district; but usually the Indiana Harbor Belt cars are pulled from the yard immediately south of the 108th Street yard, which is called the 112th Street yard, a junction of the 108th Street yard, (Tr. 2303), but it takes from one or the other of those yards, and in each instance the cars have been taken from the industry by the industry engine of the Pennsylvania Railroad to those yards, with the exception of the Federal Furnace plant, which, as stated yesterday, performs its own plant service. The Indiana Harbor Belt moves the traffic via the S. C. & S. to Calumet Park, where it crosses the S. C. & S. and leaves the S. C. & S. at that point. I cannot tell you as to the operation of the Indiana Harbor Belt in moving these cars to points in Illinois. There have been several changes there recently, but the present chief clerk at our 108th Street yard is H. O. Cook. Mr. Kelly is chief clerk at the Colehour yard. (Tr. 2304.) I presume there would be competition between the Indiana Harbor Belt and the Pennsylvania for traffic at the industries mentioned on the River Branch moving to points in the Chicago district. [fol. 1132] The Indiana Harbor Belt pays its proportion of the engine service employed in switching between these industries and the 108th Street or the 112th Street yard. (Tr. 2305.) The basis for payment is an agreed upon rate per hour for the engine service, which is divided on the basis of the cars handled for each road, and without saying positively, as far as I know it is $10.00 per engine hour. There are a number of tracks in that vicinity in both Indiana and Illinois, where there is a joint use by the Pennsylvania and Indiana Harbor, or rather, both the Indiana Harbor and the Pennsylvania reach the American Maize Products Company and Lever Brothers, both located in Indiana. The Pennsylvania serves these two. The Indiana Harbor Belt does not do switching at any plants for the joint account of it and the Pennsylvania in that territory; it does, however, at East Chicago, in the switching district (Tr. 2306), and if I remember correctly, the expense is pro rated on the same basis of $10.00 per engine hour, covering both engine and crew. Our action in handling the cars intrastate is to comply with the law, as I understand it,

but I do not know what provision. If we did not meet the rates the Indiana Harbor Belt has from those industries and points within the Chicago switching district in Illinois, I think it is the policy of the industries to use the lowest rate obtainable. (Tr. 2307.)

Cross-examination.

By Mr. Hufsmith:

As to illustrations A to O, my statement that the black lines indicated not only the customary routings but were also, in fact, the most economical routes, so far as the Pennsylvania was concerned, was based on the study to determine whether or not they were in fact more economical. (Tr. 2308-2309.) I have the information as to the engine hours employed in handling these cars to keep them [fol. 1133] intrastate, which means special service involved by the plant engines taking the cars to South Chicago, setting them off there when en route from the industry to the yard or in going to South Chicago to pick them up en route from yard to industry, Colehour yard to the industry. We have a record of the time involved by the present crews in picking up and in setting off at South Chicago while en route between Colehour and Garfield Boulevard yard in both directions. That involves the engine services, which averaged 8½ hours per day. (Tr. 2310.) No attempt was made to keep record of the time involved on account of the increased elements of service or to keep a record of the classifications at Garfield Boulevard in order to block the cars which had to be set off by the transfer engine en route to Colehour, or the time involved in putting that set-off at the head end so that it might be set off with a minimum delay. Eight and one-half hours per day is simply the time for extra engine service involved in keeping the cars out of Colehour yard. From an actual study as to whether or not the so-called natural routings operating in these illustrations are as a matter of fact more economical than any other movements, that might be made between the respective industries, I know nothing about the actual costs of either movement. (Tr. 2312.) However, I do know that it took more engine service to handle cars by the unnatural routes. I know nothing about the parts of that movement outside of the Pennsylvania, and am testifying only for the Pennsylvania.

In illustration A the Pennsylvania is a part of the movement, of course. In illustration A it handles the traffic to the East Chicago yard, and I know nothing whatever of the units of cost, the time elements, or engine hours required to move the car from East Chicago to the Barr [fol. 1134] yard of the Baltimore & Ohio Chicago Terminal. (Tr. 2313-2314.)

We have no point of interchange at our 59th Street yard with the Baltimore & Ohio Chicago Terminal, but as indicated in illustration B, a line of the Pennsylvania Railroad extends from the 59th Street yard in a southeasterly direction to the Dolton yard, and from the Dolton yard the Indiana Harbor Belt reaches the Blue Island yard, and it crosses the Pennsylvania at Dolton. That is the routing shown in illustration B from the Dolton yard to Blue Island. (Tr. 2314.) The Barr yard of the Baltimore & Ohio Chicago Terminal is not very far from the Blue Island yard of the Indiana Harbor Belt. In illustration A we delivered the shipment out of our 59th Street yard to the Baltimore & Ohio Chicago Terminal at the Homen Avenue yard, and under illustration B the Pennsylvania could have taken the car to the Dolton yard (Tr. 2315), and from the switching connection there, not now being used, it would be physically possible to deliver it to the Barr yard, but would require a great deal more engine service. There would be no loss in movement up to Dolton via the line of the Pennsylvania if it was destined for the Barr yard. If the car was to be moved from the Dolton yard to Barr yard the Pennsylvania would do it, but we do not do that. (Tr. 2316.) That is the line of the Baltimore & Ohio Chicago Terminal, running from the Dolton yard to Barr yard, and we would move over that track. Years ago we moved traffic over that route, which was discontinued because there were very few cars so handled and it was a very expensive arrangment. (Tr. 2317.) We do not deliver now at Dolton yard and let the Baltimore & Ohio Chicago Terminal take it from there to the Barr yard and thence deliver to the industry shown in illustration A, because this is an instance where, by taking the car somewhat out of route, the railroads save a considerable amount of money and engine hours. (Tr. 2317.) Answering your [fol. 1135] question as to any loss resulting after the shipment would reach the Dolton yard, I will say I do not think

the Baltimore & Ohio Chicago Terminal would take the car at Dolton yard. (Tr. 2317-2319.) If the movement was from Dolton to Barr yard we would switch it over there and from the Dolton yard to Barr yard is a distance of perhaps 2 or 2½ miles, and in illustration B from Dolton yard to Blue Island yard is perhaps a mile. The distance from Dolton yard to Barr yard is somewhat more than twice as far as the distance from Dolton yard to Blue Island yard. (Tr. 2319.) If the car moved by the Pennsylvania over the routing shown on illustration B down to Dolton yard, there would be no loss of economy in movement that far by the Pennsylvania. (Tr. 2320.) The physical connections are there to permit the switching from Dolton to Barr yard, and if it were delivered to Barr yard, that is what we would do. (Tr. 2320.) I have already testified that that could be done, but it would not be an economical arrangement. (Tr. 2321-2322.)

Examiner Faul: Why would it not be economical, Mr. Jacoby? What would be the difference in the service involved?

The Witness: For the reason it would involve a special service from Dolton yard to Barr yard by local train, whereas our regular movement from 59th Street to Homan Avenue is handled by a transfer which performs numerous other services, including interchange with the Chicago & Alton, with the Burlington at Western Avenue, and the handling of Baltimore & Ohio Chicago Terminal cars from Homan Avenue to Brighton Park for the Chicago & Alton, and other service which I need not mention; so that that transfer crew would have to be employed just the same, and in order to deliver certain cars to the Baltimore & Ohio Chicago Terminal at the Barr yard it would involve [fol. 1136] additional engine service. I do not know how many cars are delivered to the Baltimore & Ohio Chicago Terminal at the Homan Avenue yard point of interchange. (Tr. 2322.) Without that information it would be possible to determine the economy of delivering a car to the Baltimore & Ohio Chicago Terminal at Homan Avenue, rather than at the point indicated at the Dolton yard. (Tr. 2322-2323.) We could handle the traffic through to Homan Avenue without any increase of engine service; that is, with the engine service we now employ we could not handle the cars to Barr yard without increased engine service. We

could handle them to Dolton yard with the cuts of cars that go down to illustration B, and with the switch facility we could move those cars over that two and a fraction miles to Barr yard. (Tr. 2323.)

Recross-examination.

By Mr. Walter:

We have no industries on the S. C. & S., South of Hegewisch. We do not do any switching down to Bernice and then North to Dolton over our line. We have no point of interchange with the Baltimore & Ohio Chicago Terminal at or near Burnham or Hedgwisch. Our interchange point with that line is at East Chicago, Indiana. It is possible so far as tracks are concerned for us to move shipments to Bernice and then North to Dolton, a 1 line haul. It would be possible to put on power and move the cars that way. (Tr. 2324.) The physical layouts of the tracks are there.

Recross-examination.

By Mr. Hufsmith:

It is 6 or 7 miles from our 59th St., yard to Homan Avenue yard, and it is our track between those points. (Tr. 2325.) In illustration A, via socalled unnatural routing we take the car from 59th St., to Homan Ave., and deliver it [fol. 1137] there. We have our own line to 12th St., where the Baltimore & Ohio Chicago Terminal crosses it; and at 12th St., we enter upon the Baltimore & Ohio Chicago Terminal and proceed Westward over those tracks to Homan Avenue. (Tr. 2326.) It is not our track from 59th St., North to Homan yard. The map is all right. (Tr. 2326.) The Pennsylvania has a line known as the Panhandle, running Northward at 59th St., to about Kinzie St. The Baltimore & Ohio Chicago Terminal crosses the Panhandle in the vicinity of 72nd St., and there is a physical connection between the two at 12th St., the Pennsylvania in going to Homan Ave., uses their own rails to 12th St., where it enters on the tracks of the Baltimore & Ohio Chicago Terminal. (Tr. 2328.) It is the better part of a mile from the Panhandle tracks over to Homan Avenue yard. (Tr. 2328.) The Pennsylvania does own the road within a mile of Homan Ave., approximately. The track we do own

from 59th St., up to the point of connection to move beyond to Homan yard is about 6 miles. The total distance to Homan yard being about 7 and the car travels 7 miles up and 7 miles back, or 14 miles which subtracted from the 42 shown on illustration A makes it the short route. (Tr. 2329.)

Redirect examination.

By Mr. Davis:

The principal reason for saying that it was more economical for the Pennsylvania to use the routes designated in the illustrations as the natural routes than over those designated as unnatural, is the fact that the unnatural route in these illustrations involves a special engine service for handling 1 or 2 cars for considerable distances on main tracks and that involves engine hours which would not be involved if the cars were handled over the natural routes. (Tr. 2330.) In handling over the natural routes, it is necessary in all these illustrations to take the cars into Colehour yard; and by keeping them out of Colehour yard is what [fol. 1138] what causes these additional elements of service. (Tr. 2330.) In my judgment, the greatest factor in economical handling is volume of traffic and not distance. There are a good many factors that enter into the time employed handling interchange. For instance, as I tried to explain last night, the delivery of a car from Colehour yard to the Indiana Harbor Belt at Michigan Ave., as compared with the delivery of the same car from Colehour yard to the Belt Railway of Chicago, the distance to the Barr yard is less but there are operating reasons why it takes just as long to go there as it does to get to the Michigan Avenue yard of the Indiana Harbor Belt. Leaving the West end of Colehour yard, the conductors have to obtain permission from the train dispatcher to enter upon the main track. He proceeds westward on the West bound main track to River Branch Junction where there is a delay while crossing over. After permission is obtained for crossing over, it must also be obtained from the Junction Train Director to enter upon the Belt rails which is only granted when it is possible to obtain an uninterrupted movement over the Rock Island and the Belt crossing at the command of and subject to the Rock Island. For these

reasons that delivery uses fully as much time and sometimes more than is required to run over our own rails to Indiana Harbor and thence to Michigan Avenue yard though as before stated, the distance to the South Chicago yard is somewhat less. (Tr. 2331-2332.)

R. A. Barlow was duly sworn and testified as follows:

Direct examination.

By Mr. Davis:

I reside in Blue Island, Illinois and am train master of the Baltimore & Ohio Chicago Terminal.

Mr. Walter: We will concede Mr. Barlow's qualifications.

[fol. 1139] The witness: (continuing.) We handle the transfer traffic involved in this case in regular transfer trains (Tr. 2333), which are made up the same as a train would be made up in regard to road haul movement. We have a locomotive at one end and a caboose at the other with the air connected and with a full train crew, which operates under dispatchers orders and the equivalent of dispatchers orders. There is no difference in operating that kind of a train and road haul trains. In handling these transfer trains we make no distinction as between state traffic and interstate traffic in them. Both kinds are handled in the same train; if there is that traffic to move. (Tr. 2334.) Under illustration A in Exhibit 110, the Baltimore & Ohio Chicago Terminal would receive that car originating on the Pennsylvania from it at East Chicago, Indiana. From there we would move the car in a transfer to Barr yard where it would be yarded and moved in a transfer thence to Harvey, where it would be yarded and then placed at the industry (Tr. 2335), which would be the natural route. Moving over the unnatural route shown in red, we would receive that car from the Pennsylvania at Homan Ave., yard, where it would be yarded and handled in transfer service to Barr yard, where it would be yarded and thence go in transfer to Harvey and be placed at the industry by the industry switch engine. (Tr. 2335.) Insofar as illustration A is concerned the service of our line would involve

the same number of yardings or classifications in either of the handlings and the difference in the two routes given would be the distance on the Pennsylvania Railroad and the distance on our line. Our line participated in the movement shown by illustration N in the same exhibit. On the natural movement we would receive that car at Whiting from the New York Central. We would then yard it at Whiting and handle in transfer service from there to Homan Avenue yards where it would again be yarded and then placed at the industry with the industrial engine. (Tr. 2336.) In the illustration the car actually originated at industry No. 1 on the New York Central line and terminated [fol. 1140] at No. 34 on the Baltimore & Ohio Chicago Terminal. We classified the car at Whiting, moved it in transfer service to Homan Ave., yard where it was yarded and thence handled to the industry by the industrial engine. Via the unnatural route, we would get the car from the Chicago River & Indiana at Ashland Ave., handle it from Ashland Ave., to Homan Ave., with our own power, where it is yarded and then placed at the industry by the industrial engine. Via the black route or the natural route, 2 roads would be involved. A 2 line haul, the New York Central and the Baltimore & Ohio Chicago Terminal (Tr. 2337); and via the unnatural route there would be 3 lines, the New York Central, the Chicago River & Indiana and the Baltimore & Ohio Chicago Terminal. (Tr. 2338.)

Our line was involved in illustration O; via the natural route the Pennsylvania would deliver that car to us at East Chicago, Indiana from which we would handle it in transfer service to Homan Avenue, where it would be yarded and handled from there to the industry by an industrial engine. (Tr. 2338.) And via the unnatural route, we would receive the car from the Pennsylvania at Homan Avenue where it would be yarded and there handled to the industry by an industrial engine. (Tr. 2338.) In order to keep the car out of Indiana, the extra service, if any, falls on the Pennsylvania.

Cross-examination.

By Mr. Walter:

There has never been an interchange at 59th St., between our road and the Pennsylvania and I do not know why one

has never been put in. (Tr. 2339.) I do not know that it would be much more satisfactory to have an interchange there than to have it at Homan yard on traffic moving into that territory, such as Barr yard. (Tr. 2339.)

[fol. 1141] Referring to illustration A, from Homan Avenue, we handled this car South in one of our through transfers. If we received the car at 59th St., it would be necessary to stop the transfer and pick it up and providing facilities were established there, to receive it (Tr. 2339) but with such facilities we would have eliminated the transfer of the Pennsylvania from 59th St., to Homan Ave., and the service at Homan Avenue, but I do not know whether interchange at 59th St., would be in the public interest, nor do I know that it would not. I know that in that congested territory where we operate passenger trains it would not be a good move on our part to stop our transfers to pick up at an intermediate point like the track we would put in at 59th St. We have industries on a line from Homan Avenue to Barr yard. We have an *an* industry engine (Tr. 2340) that is located in the district serving those industries, off what we term an industrial lead.

Service from the 59th St., yard could not be handled the same as we handle business to and from the industries in that neighborhood because the industry engine operating in the district does not go South of 75th St., and those cars would have to be handled to Barr yard by transfer run which would make it necessary to stop the transfer run as I stated before. Of course we would have to have a transfer one way or the other and stop it but we do not run transfers from 59th St., they run over to Homan Avenue because we do not have facilities that would require us to stop at 59th St. (Tr. 2341.) The carriers have not, to my knowledge, given attention to the suggestion of the Commission in its decision in this case originally that the carriers give study and attention to the elimination of wasteful transportation. We have a track connection with the Pennsylvania at Riverdale. If the Pennsylvania should take that car to Bernice, and turn it over to us at Riverdale, we would be in a position to receive it there if it saw [fol. 1142] fit to do that and there is no obstacle to their making the movement that way on our line or on the Pennsylvania except that between Riverdale, Dolton and Barr yard, our transfer runs are more often. We run 4 ways

out of Blue Island and of course all our transfer runs out of East Chicago to the different territories out of Blue Island cover that piece of track. (Tr. 2342.) We have track connection at Calumet Park with the Pennsylvania but there is nothing there except a Y track. There would be no place to set off or pick up cars, but all we would need would be more room. The Y is about 10 or 12 car lengths long. That line is established as main track between Hegewisch and West Hammond; we could not leave cars stored there but it is physically possible to take the cars in and take them out and make interchange there. (Tr. 2343.) There is no substantial difference in the expense whether the car is received at Homan Avenue yard and handled to Barr yard or received at East Chicago and handled to Barr yard. The distance a car moves in transfer is not important in determining cost. Our second illustration was N; the movement from Grand Crossing on the New York Central from the Republic Steel Corporation plant to the Chicago Screw Plant at Homan Avenue, which we handled from Ashland Avenue yard to Homan Avenue. The less distance from the Ashland Avenue yard than from the East Chicago yard to Homan Avenue would not make that route much more economical than handling it via the longer distance. Our yarding with us is about the same. (Tr. 2344.) We would handle the car from Ashland Avenue to Homan where it is yarded and it would be one less yarding. So far as the Baltimore & Ohio Chicago Terminal is concerned, we would possibly save a little money by that method. (Tr. 2345.) We participated in the movement shown in illustration O, being a shipment from the Republic Steel Corporation on the Calumet Branch of the Pennsylvania to the Atlas Forge Co., on our line. There [fol. 1143] are several routes so far as physical movement of the traffic is concerned open between industries No. 1 and No. 35. It appears from the map Exhibit No. 15 that the following routes could be used without building additional track; the Pennsylvania could give us that car at East Chicago, and Homan Avenue. (Tr. 2346.) We have connections with the Pennsylvania at Calumet Park, Dolton and Riverdale. It crosses our line at Forest Hill but there is no connection there. We could not interchange a car from 1 line to another at that point. The movement must be a two line haul in any event. We have only two

points of interchange with the Pennsylvania and those are at East Chicago and Homan Avenue. (Tr. 2347.) Out of the 6 connections I named, there are only 2 points where we interchange. (Tr. 2348.) That is not a representative proportion of the connections and interchanges we have throughout the district because we have more connections with the Pennsylvania than we have with other lines in Chicago. We interchange with the Indiana Harbor Belt at Michigan Avenue yards at Indiana Harbor. The Indiana Harbor Belt delivers and receives to and from the Baltimore & Ohio at Blue Island. The interchange is handled in both directions by the Indiana Harbor Belt. I am not sure that it is handled as a two line haul. (Tr. 2249.) Formerly this interchange was made at Indiana Harbor and the haul is about the same via either Indiana Harbor or the interchange at Blue Island. There is not a saving of 15 miles via the Indiana Harbor interchange route. The 2 roads run parallel almost all the way. The Indiana Harbor crosses our line at Calumet and proceeds to Indiana Harbor and under the present method, we cross at Calumet and go out to Pine Junction. A movement from an industry West of Blue Island interchanged at East Chicago to the Indiana Harbor Belt and handled by it back to the neighborhood of Blue Island would be a very unusual handling. We both serve the same industries West of [fol. 1144] Blue Island. (Tr. 2349.) From an industry on the Indiana Harbor Belt, East of Blue Island, the interchange is made by it at Blue Island by the use of our rails and formerly and now, that shipment moves into Indiana and then back if it is going to the Baltimore & Ohio Chicago Terminal. We do not make the interchange at Blue Island because we have no physical connection at Blue Island. We have to go around by the way of the Junction to make interchange at Blue Island. The distance using Blue Island Junction is about 4 miles. We would not save 25 miles by that interchange but we would save some mileage, about 12 miles, I would say. (Tr. 2350.) Blue Island to East Chicago is 11 miles. At the industries West of Blue Island, served jointly by our line and the Indiana Harbor Belt, both lines do the switching service and I do not believe there would be economy in having the service performed by a single line for the joint account of both. (Tr. 2351.) We have joint switching service to which our

line is a party; at the Sinclair Oil Co., where our line does the switching for the Indiana Harbor Belt, Pennsylvania and Elgin, Joliet & Eastern. We are compensated for that on an engine hour basis, which is, I believe, $10.00 per hour. That charge prevails generally throughout the district and I presume is regarded as equitable. It includes the crew, the fuel and everything that goes with the engine, (Tr. 2352) but excepts the rails. Our line serves the Gilbert & Bennett Wire Co., an industry West of Blue Island and the Indiana Harbor Belt also serves that company. In handling a shipment from that industry to a point on the Baltimore & Ohio, we would take the car from the industry to Barr yard by a switch crew, from there to East Chicago by a transfer crew, where it would be delivered to the Baltimore & Ohio. (Tr. 2353-2354.)

If a car from an industry on our rails not served by the [fol. 1145] Indiana Harbor Belt was going to a point on that line we would handle it from the industry to Barr yard by a switch engine; from there to East Chicago by a transfer where it would be delivered to the Indiana Harbor Belt. We do not interchange with the Indiana Harbor Belt through Blue Island Junction. From an industry on the Baltimore & Ohio, West of Blue Island Junction, we have not changed the former interchange at East Chicago to Blue Island Junction. The Indiana Harbor Belt interchanges with the Baltimore & Ohio only at Blue Island and not with the Baltimore & Ohio Chicago Terminal. The Baltimore & Ohio did not use our rails to East Chicago and make interchange there with the Indiana Harbor Belt and back to the industry. The Baltimore & Ohio left our line at Calumet and delivered to the Indiana Harbor Belt at Gibson at one time. The Baltimore & Ohio does not use our tracks to East Chicago. It connects with the Indiana Harbor Belt tracks at Indiana Harbor and they deliver in Gibson. The Baltimore & Ohio uses our tracks at Blue Island but we handle the business between it and the Indiana Harbor Belt. (Tr. 2355.) The Baltimore & Ohio delivers the car to us and we handle the business at Blue Island and from Blue Island to the Indiana Harbor Belt, Blue Island yard, it is handled by the Indiana Harbor Belt entirely. I am not positive that that is a 3 line movement.

Cross-examination.

By Mr. Hufsmith:

Referring to illustration O in Exhibit 110, we have a main track from Barr yard to the East Chicago yard which is all used. (Tr. 2356.) There is a point between Barr yard and East Chicago on that route where there is physical connection with the Pennsylvania railroad. There are few industries along that track. We have 2 between Barr yard and East Chicago and our switch engines travel from Barr yard daily or almost daily. That track is not used [fol. 1146] jointly; it is strictly a Baltimore & Ohio Chicago Terminal track. The Pennsylvania does have trackage rights thereon between state line and East Chicago. (Tr. 2357.) State line is at Hammond. The tracks are owned jointly from state line to East Chicago yard but from State line to Barr yard, is owned by the Baltimore & Ohio Chicago Terminal but the Pennsylvania, I believe, has trackage rights as far as Calumet Park. We have a connection with the Pennsylvania at Dolton which is between Barr yard and East Chicago. We used to interchange through Riverdale instead of Dolton. (Tr. 2358.) There is a track connection at Dolton and at Riverdale. There is one small industry located between Dolton and Barr yard. (Tr. 2359.)

Examination by Examiner Faul:

In our transfer service the difference in length of hauls involved in the district, from fractions of a mile to a maximum of 89 miles, would not make a great deal of difference. We compare the distance with the elements of service and the distance is of lesser importance.

Cross-examination.

By Mr. Ames:

Referring to illustration A in exhibit 110, traffic from industry No. 12 to industry No. 2 would move first over the Pennsylvania railroad and then over our line, those two lines performing through transportation service. Referring to that as the natural route which goes through the state of Indiana, and the unnatural route as that in the

state of Illinois, the latter is not the only unnatural route I have observed in connection with this traffic. Recently we have had occasion when the traffic did not follow the natural route. (Tr. 2360.) We make an effort to follow [fol. 1147] the natural route, which is the reason we have set that up with points of interchange. I believe the traffic between those two industries would invariably move via the natural route. Of course, I am not in a position to say that it always did. But it is natural to suppose it would, because that was the natural flow of business. The railroads controlled it. In the movement mentioned the traffic would first be tendered to the Pennsylvania Railroad. I do not know whether the revenue would be divided differently so far as the Pennsylvania is concerned if they turned it over to us at any point of interchange. (Tr. 2361.) The Pennsylvania has the power, in the absence of the shippers instructions, to turn the car over to us at one junction point or another. I do not think the Pennsylvania can get more revenue for itself by selecting the junction at which it will hand us the traffic, but I am not positive. Whether or not it would get the same revenue turning the car over to us at East Chicago that it would get if it turned it over to us at 59th Street or Homan Avenue, I am not qualified to answer. I do not know what either line would get in handling the cars shown in the illustration. (Tr. 2362.) The traffic has always followed the natural route so far as the Baltimore & Ohio Chicago Terminal was concerned. We did not control it. The Pennsylvania could select the junction at which it would deliver us the traffic, but after we received a car at East Chicago we handle it through the route indicated on the map. I do not know of any occasion when we did not receive traffic at East Chicago moving from industry No. 12 to industry No. 2. So far as I know, the natural route was the invariable route, but there might have been cars moving on a difference route that I would not know about. Traffic could have been moved via another route and not [fol. 1148] have been within my knowledge. (Tr. 2363.)

Referring to illustration X, I do not know how the switching rates are divided among the carriers. (Tr. 2364.) I do not know about these divisions and I do not know

whether they have a bearing on the inclination of the originating line to select particular junctions points. (Tr. 2365.)

Recross-examination.

By Mr. Walter:

The Baltimore & Ohio Chicago Terminal at Harvey serves industries exclusively, and the Indiana Harbor Belt at Blue Island serves an elevator exclusively. (Tr. 2365.) Traffic from that elevator at Blue Island would move to the Harvey industry through our interchange at Michigan Avenue, East Chicago. We do not perform that interchange at Blue Island because we have no interchange at that point. We have a physical track connection and the Indiana Harbor Belt and the Baltimore & Ohio interchange at Barr yard. I do not know why we should not do it at Blue Island junction. We own the Baltimore & Ohio Chicago Terminal track there, but I am not qualified to say who owns the Indiana Harbor Belt. (Tr. 2366.) It is physically possible to interchange there; the track connection is there and it would save approximately 12 miles. There is a delivery today by the Baltimore & Ohio to the Indiana Harbor Belt on that same track, and I suppose we could make deliveries there direct to the Indiana Harbor Belt and save a distance on the round trip possibly better than 20 miles. (Tr. 2367.)

Cross-examination.

By Mr. Shafer:

In so far as the Baltimore & Ohio is concerned, I think some of these so-called unnatural routes might possibly [fol. 1149] become the natural routes on some of this traffic. (Tr. 2367.) I do not believe the reciprocal switching between trunk lines and from industries to trunk lines has any influence on the routing of the intradistrict switching traffic.

Redirect examination.

By Mr. Davis:

We have a coordination committee that has been in existence for several years, which considers track connec-

tions and facilities to see if beneficial changes can be made (Tr. 2370-2371), and that question is a live one today, and has been since the Lowrey agreement made in 1911. Mr. Walter asked me if a committee had been appointed since that time, but the coordinating committee has been functioning for years before that.

Recoss-examination.

By Mr. Walter:

I do not know that the coordinating committee has focussed its attention on the suggestion by the commission in the switching case that the carriers investigate the question of possible economies in the use of different routes. (Tr. 2372.) I do not know whether there has been increased activity by the committee since the hearing in this case. (Tr. 2372.)

Mr. Davis: If the examiners please, in answer to the inquiry that Mr. Ames made in connection with which I said I would look into the matter, I think this will answer his inquiry as to the way the rate is divided. (Tr. 2372-2373.) I read from division sheet No. 11-H: "Where interchange is direct between originating carrier and delivering carrier the compensation is divided 50-50." That is, the total revenue is divided 50-50. When the interchange is via any of the carriers named in a three-line haul the originating carrier receives 37½ per cent, the intermediate carrier 25 [fol. 1150] per cent, and the delivering carrier 37½ per cent, and for a single-line haul the originating carrier would get 100 per cent. (Tr. 2373.) These divisions apply to the Lowrey basis. (Tr. 2374.)

F. A. Meyers sworn and testified as follows:

Direct examination.

By Mr. Davis:

Live at Hammond, Indiana, and have been connected with the Indiana Harbor Belt Railroad since about 1904 or 1905.

Mr. Walter: We will concede his qualifications.

Mr. Davis: All right.

The Witness: Am in the operating department and was a witness in the original case. Am familiar with the make-up of our transfer trains (Tr. 2375), which are made up in manner similar to and comparable with road-haul trains, having a locomotive at one end and a caboose at the other, with the air connected, complying with all safety appliance rules and regulations and working under train orders on some branches of the railroad. We make no distinction between state and interstate traffic in our transfer trains, both classes are handled in the same trains. (Tr. 2376.) The Indiana Harbor Belt begins at Indiana Harbor, Indiana, operates from that point south to Osborne, Indiana, and west from Gibson, Indiana, to Franklin Park, Illinois. We have a branch off the main line at Argo, Illinois, that operates into the stockyards. We cross the Indiana-Illinois state line at Hammond between Hammond and Calumet City. We handle these different kinds of freight, both locally within the state of Indiana and locally within the state of Illinois, and interstate between the two, [fol. 1151] and there is no difference in the way of handling either kind of freight or all kinds of freight as just described. (Tr. 2377.) Our road participated in the movement in illustration B, and these illustrations covered actual movements, those actually made. In illustration B we received the car from the Pennsylvania Railroad at Michigan Avenue yard, where it would be yarded or classified and transferred to Gibson yard, which is the normal and natural way that we would receive a car of that character. As the car actually moved we received it at Blue Island yard, the Pennsylvania delivering it direct into the yard. (Tr. 2378.)

Illustration J involves a movement by our railroad. In the natural and ordinary movement of the traffic we would receive that car at Michigan Avenue yard where it would be classified, thence transferred to Gibson and delivered to the Michigan Central at Gibson yard. As the car actually moved we did not receive it. It was handled by the Pennsylvania, the Belt and the Michigan Central. (Tr. 2379.) In illustration L the car originated at industry No. 28 at Norpaul and moved to industry No. 29 located on the Pennsylvania Railroad. Via the normal and natural route

we would receive that car from the industry adjacent to Norpaul yard, transfer it to Blue Island and classify it into a train running direct from Blue Island yard to the Pennsylvania Railroad at Indiana Harbor, which would be in the vicinity of Michigan Avenue yard, probably less than a mile north or northeast of the Michigan Avenue yard. As actually handled in order to keep the movement within the state of Illinois, we took the car from the industry to the Blue Island yard, classified it into a train to the Panhandle for the Pennsylvania, and delivered it to the Pennsylvania at Dolton or Riverdale. (Tr. 2380.) Our line participated in the movement in illustration N. We got that car from Consumers Company at McCook, [fol. 1152] Illinois, I believe, or anyhow from industry 30, and under normal method of handling a car from industry 30 to industry 31 we would classify the car at McCook, transfer it to Blue Island, classify there into a direct transfer run to the Pennsylvania or Indiana Harbor. McCook is in the vicinity of the location of industry No. 30 shown in the illustration. (Tr. 2381.) As the car was actually handled to keep it within the state of Illinois we handled it the same way up to Blue Island yard, where it was classified into a train going direct to the Panhandle at Riverdale; Riverdale and Dolton are practically the same as far as the Indiana Harbor Belt is concerned. (Tr. 2382.)

Cross-examination.

By Mr. Walter:

On page 1 of the exhibit there are 5 B movements illustrated and our line participated in all of those movements, and from the industries to and from which they moved it looks like all were grain or grain products. (Tr. 2382.) All of those industries are located on the Pennsylvania Railroad, and we would not handle any of that traffic with our own engines until delivered by the Pennsylvania Railroad out of the yard shown. In illustration B here, Blue Island yard is ours, and so far as the Indiana Harbor is concerned, it was clearly more economical to handle via the red route than on the black route. I do not know what revenue was received by either company on that two-line haul. It appears that the Indiana Harbor Belt was better

off on all of these movements than it would have been if they had taken the route through Indiana. (Tr. 2383-2384.) Via the Indiana Harbor Belt from Gibson to Franklin Park the movement would be interstate, and any movements from Calumet Park to various destinations intermediate [fol. 1153] would be intrastate movements; and it appears that all those would be more economical intrastate than our interstate movements from Indiana to Franklin Park. (Tr. 2384.) I heard the testimony of Mr. Jacoby as to the manner in which traffic is handled on the River Branch, but I do not know anything about the operation of the Pennsylvania Railroad. We do not serve any industry direct on that branch. (Tr. 2385.) We haul cars in that territory and leave them there for the Pennsylvania to handle from there on to the industries. I do not know how they are paid for them. That is handled by the accounting department. There naturally would be competition between the Indiana Harbor Belt and the Pennsylvania for that traffic from the River Branch to and from points within the Chicago district in Illinois. Whether or not our movement would be entirely an Illinois intrastate one would depend on the destination of the car or the established interchange point. If we had an established interchange point with whatever railroad to which destined in the switching district, Illinois, we would handle that as an intrastate movement. (Tr. 2386.) We would not have an established interchange point in Illinois with the Baltimore & Ohio Chicago Terminal. (Tr. 2386.) We interchange with that line at East Chicago, Indiana. We would not interchange with it at Blue Island Junction, because no interchange has been established at that point. We interchange with the Baltimore & Ohio and I could not say why we do not interchange with the Baltimore & Ohio Chicago Terminal; that is a matter for the traffic department and the higher officials of the operating department to answer, but so far as our department is concerned, I believe we stand ready to take the business there if it is offered to us. (Tr. 2387.)

Industry 28 is the Phillips Petroleum Company, but I [fol. 1154] do not know whether it is a pipe line or not. (Tr. 2387.) I do not know that a pipe line brings oil in there that does not come in by rail. That is our line from Norpaul south. As far as I know, this particular industry

is a pipe line terminal with loading racks there, but I do not know anything about the rates. From Blue Island to East Chicago our mileage is about 12 miles. (Tr. 2388.)

Cross-examination.

By Mr. Brown:

We have an arrangement whereby we handle business between Blue Island and any point west and north of there to the 108th Street yard of the Pennsylvania on the River Branch with our own power. We are handling that kind of business at the present time. It routes entirely through Illinois if it comes from points in Illinois. The Norris Grain Company and the Keystone Elevator are on that branch and the 108th Street yard of the Pennsylvania is south of those two industries.

Cross-examination.

By Mr. Ames (Tr. 2389):

As far as the Indiana Harbor Belt is concerned, the natural route indicated in the exhibit was the natural route used prior to the effective date of these rates. (Tr. 2389.) I imagine the originating line selects these routes. When we originate the traffic there is an established interchange point for it, and we select the route. The illustration of movement from industry No. 6 to industry No. 10 is contained in illustration B, showing movement as far as Pennsylvania and the Indiana Harbor Belt are concerned, and the natural route there would be through Colehour yard for classification and be delivered to us at Michigan Avenue. (Tr. 2390.) It is generally known, I think, that the classification is more expensive than the road haul. (Tr. [fol. 1155] 2390-2391.) Whether or not there would be a tendency on the part of the originating carrier to select a route which would avoid as many classifications as possible, I would not want to testify, as the Pennsylvania handled this particular car. (Tr. 2391.) When we have the selection of the route and could perform one classification over one route or three classifications over another, whether we would use the one with the one classification would depend largely on the volume of business that was moving, and the same principle would apply for one car

as for 100, although in making interchange movements volume has considerable to do with the establishment of these interchange points. (Tr. 2391.) But having the power to select the route, I imagine we would select the route which would avoid as many classifications as possible for our line, and would do that whether we had 1 car or 100. In saying I imagine so, I mean that we would or we do (Tr. 2392) when the volume warrants it; when the volume warrants it we change the routing on different shipments. My reference to volume is illustrated by this: In a movement of grain from South Chicago, if there were 100 cars of grain we would move them without classification at Calumet City yard. They would move in a solid train. (Tr. 2392.) I mean by "volume" that it sometimes avoids classification. If we had a route requiring 3 classifications and another requiring only 1, and we had power to select the route, we would take the one requiring 1 classification. (Tr. 2393.) I do not know in illustration B how the Pennsylvania moved it over the red route. The illustration shows Dolton, South Chicago, Garfield Boulevard, and 59th Street as Pennsylvania yards. Apparently traffic over that red route would pass through those four yards. (Tr. 2393.) I cannot tell why the Pennsylvania would select a route [fol. 1156] having 4 interchanges or 4 classifications, as against giving the business to us at Michigan Avenue yard, where it would have to make but 1 classification. (Tr. 2394.) I have heard that since the higher interstate rates have gone into effect, the shippers have selected the routes so as to keep the shipments within the state. I have no actual contact with that situation. We just move the cars where we are told to move them. (Tr. 2395.)

In illustration L our line originated the movement and it actually moved via the red route with 2 classifications on it. Via the black route a classification would have taken place at Michigan Avenue yard, Gibson yard, Blue Island, and at Norpaul, 4 classifications. (Tr. 2396.) The shipment via route involving 4 classifications instead of 2 is probably due to routing by the industry; routed via the Panhandle instead of routed via the Pennsylvania at Indiana Harbor. I could not say as to that transaction being the case where the shipper gave the routing and left us no election because I am not in a position to know. If the shipper told the agent he wanted that routing, the agent

would probably not ask the reason and as far as the operating men are concerned they would not know, the reason. (Tr. 2397.) I have no contact with the rates, nor the solicitation of business or the routes selected. I am just an operating man. (Tr. 2398.)

Cross-examination.

By Mr. H. J. Campbell:

Referring to illustration B and assuming the divisions to be as Mr. Davis stated them, I could not answer whether or not our line would get as much revenue for the service of classification in Blue Island yard on the red route and thence moving over to industry No. 10 as it would if the shipment had taken the route from the Michigan Avenue yard. (Tr. 2398.)

[fol. 1157] Recross-examination.

By Mr. Walter:

Taking illustration E, there is no established interchange with the Pennsylvania Railroad at 108th St. We go there to get all the traffic the Pennsylvania brings out and all it has for us it leaves there. I could not say why the traffic could not have been handled by Calumet Park to 108th St., or 112th St., instead of going on up to 59th St., and over to Garfield and then down. It may have been routed Panhandle by the shipper. If routing had been left to our line, it seems that the routing we are talking about over our line into 108th St., would be the route to take. Exhibit 110 is a Pennsylvania exhibit and not an Indiana Harbor exhibit. (Tr. 2400.)

C. L. Whiting sworn and testified as follows:

Direct examination.

By Mr. Davis:

I live in Chicago and am connected with the Chicago, Milwaukee, St. Paul & Pacific Railroad, having been with it and its predecessor 25 years. 10 being in Chicago. About

15 years of that time I spent in the operating department and the last 10 years in the Chicago District as Superintendent of terminals of that road. I am familiar with the operation of that road within the Chicago district. We operate transfer trains within the district.

Mr. Davis: How were those trains made up from an operators standpoint.

The Witness: They are made up by ——

Mr. Walter: Perhaps we can shorten this. You are asking that question of each and every witness. I assume that it was the practice throughout; the law requires it and good business practice requires it and I have no intention of challenging that statement so far as I am concerned that [fol. 1158] the switching transfers are handled that way by all of the lines.

Mr. Davis: It is agreeable to me not to go into that further if Mr. Walter and the others in the room whom he does not represent will stipulate that the switching movement (Tr. 2404) within the district here under consideration is handled by trains such as have been described by the previous operating witnesses for all the roads.

Mr. Hufsmith: I have no objection to that.

Mr. Ames: We will make that stipulation.

Mr. Shaffer: That is agreeable.

Mr. Davis: And that the interstate traffic and the intrastate traffic is handled in those trains alike—that is, in the same trains, I mean.

Mr. Walter: Indiscriminately.

Mr. Davis: Yes.

Mr. Walter: I assume that is the fact and I am willing to make your stipulation.

Cross-examination.

By Mr. Brown:

Our railroad runs West from the Union Passenger Station but runs North first about 1,000 feet, (Tr. 2405) and the Pennsylvania railroad comes in from the South. There is a track East of the Union Station over which we have run our transfer trains and over the Pennsylvania Railroad South. (Tr. 2406.) But I do not know that the Pennsylvania Railroad also uses that track going North on to our track with freight. (Tr. 2407.) You were talking

about the joint tracks. The ownership of this property from Canal Street to Western Avenue about 2½ miles, the tracks are jointly owned by the Pennsylvania and the Milwaukee Railroads, from Canal Street to Madison Street it is owned jointly and from Madison Street to Van Buren it is owned exclusively by the Pennsylvania Railroad. The Union Depot Co., has no ownership of this track I am talk- [fol. 1159] ing about. (Tr. 2408.) All of the railroads in the city of Chicago use those tracks going North, South, East or West, whatever you want to call it, but they are not Union Depot tracks. The track East of the Union Depot between the Union Depot and the River is used for freight interchange. They might use it to interchange but they do not interchange any cars at that point, but freight is handled over it. (Tr. 2409.)

J. L. FAULK was sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am division Superintendent of the Chicago, Burlington & Quincy Railroad residing in Chicago, and have been connected with that company for the past 35 years, practically all of it in the operating department. There is a co-ordination committee that has worked upon these terminals for the past 15 years, of which I am a member and have been for the past 12 years. Every railroad in Chicago is a member of the co-ordination committee and the work is divided among different subcommittees. The work of the committee was active even before the switching case was heard and afterwards as well. (Tr. 2411.) The Committee's purpose is to coordinate the facilities of the entire switching district so that traffic may be handled in the most expeditious and most economical manner. It has been and is a very live subject. In the past 10 years there have been a number of changes in the manner of re-routing and handling (Tr. 2411) the traffic in accordance with the committee's recommendations. Have no particular changes in mind, although there have been quite a few where the work has been coordinated; where there were 2 lines doing the work and one would do it, and things like that. As to the

routing of freight and the handling of transfer trains, the [fol. 1160] flow of traffic governs that. As to whether or not additional track connections should be made or whether present connections should be eliminated, our committee investigates when those matters are brought to its attention and makes its recommendations to the general managers association.

Cross-examination.

By Mr. Walter:

The layout of the yards of the various carriers in Chicago was largely dictated by the requirements of traffic moving in and out of Chicago. (Tr. 2412.) Nothing in particular has been called to our attention regarding a number of suggestions made in the switching case as to how improvements might be made in the service and no particular consideration of this switching situation as far as routes go, has been given in this particular case. It has been a live subject though—everything in general. (Tr. 2413.)

Redirect examination.

By Mr. Davis:

A committee consisting of Mr. Shreeve, Mr. Atwill and myself has been studying the questions raised in the decision of the commission in this case and it particularly considered several of the commission's suggestions but I did not know that was a part of this case. This committee is now studying the expeditious routing as well as the short routing of traffic but the communication from the coordination committee dealing with this case is still in process of study. (Tr. 2414.) It has not been concluded. A study is being made right now involving the things brought up in the switching case. The communication from the coordination committee was dated September 24, 1931. (Tr. 2415.)

Recross-examination.

By Mr. Walter:

Your question confused me but I am familiar with the [fol. 1161] matter in the memorandum referred to which brought it to my recollection. (Tr. 2415.) These sug-

gestions made in the switching case we are now considering involve the handling of traffic through what might be termed an out of the way route. We have been considering that. As to improvement in the service by carriers in our method of interchange, their routing or manner of handling cars as I said before is still in process of study and I cannot specifically tell anything about that right now until the study is completed. We have had something in mind about bettering the service (Tr. 2416) other than what we have been handling over a period of years but I have nothing specific in mind at this time. Well there were some specific instances brought up in the case that indicated that the traffic was handled in a round about way; (Tr. 2417) but I have nothing specifically in mind in that but that is the gist of the whole thing. That does not come to my mind from the memorandum. (Tr. 2417.) It is the subject as a whole. I do not know of the establishment of any new interchange points in the last 3 or 4 years in the district by any of the carriers and the according of additional trackage rights and I am not in a position to say whether a single carrier service, particularly industries where previously 2 or 3 or more had served the particular industries. That matter might or might not be considered by our committee. I do not recall having any such matter under consideration or being advised of any suggestion of that sort. (Tr. 2418.)

Cross-examination.

By Mr. Shaffer:

We have been considering the situation as a whole since the committee was formed. The committee has meetings frequently which I usually attend. I do not recall of an instance where the Burlington or Pennsylvania sought to eliminate their direct connection at Wood St., as coming before our committee.

[fol. 1162] Cross-examination.

By Mr. Brown:

On traffic from industries in the lumber district on our road going out to an industry on the Northwestern at Cragin the nearest physical connection would be via the

Belt Railway of Chicago. (Tr. 2419.) We do not have physical connections at Wood St., with the Northwestern. We have one near 16th St., and Canal Streets. We took up the connection at Wood Street about a month ago but prior to that we did use the Wood Street connection for cars for the Produce Terminal only, but on shipments going to Cragin we did not because it would be an indirect route there. The Wood Street station was the nearest connection insofar as the Northwestern is concerned for certain traffic, but not as to any traffic, because it would be a rather indirect route. The Northwestern had the right to say where it would receive its traffic. It would be too much interference to handle it through the Wood Street yard. That yard is no longer an interchange point. (Tr. 2420.) This was not a case where the delivering road exercised its right to say where it would take the traffic; it was handled according to the routing. So far as the Burlington is concerned, our haul from the lumber district to Wood St., was not a shorter movement than to the Belt Railway connection at Hawthorne. We have a direct connection with the Belt at Western Avenue where it handles it. It takes it to 26th St., and then to Cragin Junction where it is given to the Northwestern. I do not think that route is longer than it would be through Wood St. We use the connection near 16th and Canal for the Produce Terminal business only. That is business going into the new potato yard (Tr. 2421)—the Morgan Street yard. I would not say that the terminal could be used for all classes of freight because the Northwestern would not be in a position to handle all kinds of freight in their Wood Street yard and they would have [fol. 1163] to be the judges as to that. It is physically possible to deliver cars to the Northwestern at 16th & Canal; there is a railroad running there, but as to the physical condition that is a question for the Northwestern to determine. Our road uses the St. Charles Air Line in making deliveries to Michigan Central, New York Central, Rock Island and Illinois Central, and we also have some industries on the St. Charles Air Line. (Tr. 2422.)

G. F. VIVIAN recalled as a witness:

Cross-examination.

By Mr. Walter (Tr. 2423):

I was a witness in the previous hearings in this case and have been in touch with the handling of the switching case ever since it first started but I do not remember what year, I think it was about 1926. Prior to that, some changes were proposed in the switching rates on iron and steel. I was not involved in that other than in the first traffic test made, I believe in 1926. Exhibit 99 is a restatement of the September, 1926 traffic, to show loss due to the refusal of the two state commissions to permit interstate rates of 3¢, 3½¢ and 4¢ to become effective on intrastate traffic. (Tr. 2424.)

[fol. 1164] This information is shown in the lower block on page 1. (Tr. 2424.) That shows that through the action of the two state commissions, the carriers have had a loss solely because of the failure of the two state commissions to grant the increase. (Tr. 2424.) I believe that to be a fact, based on the September, 1926, traffic. It is based, as stated in my direct testimony, on the fact that September, 1926, was considered as 1/12 of the year, and that 1/12 verified and given in the testimony in the original case; the original hearing. It is not based on some more assumptions. I assume that we would have the traffic moving in that volume if we had the increased rates. I am assuming that the traffic would bear the higher rates. I stated that in my direct testimony. (Tr. 2425.) I feel warranted in saying that we would have had the traffic at the increased rates to the same extent that we would have other business in the United States today. I do not know that competition by truck and barge in the district will take more business with the increased rates than they would on the 2½ and 3-cent rates. I do not know anything about that. Under the exhibit, 99 I mean, we have had a $2,000,000 loss, that is, we would have had $2,000,000 more if we had had the increased rates. (Tr. 2426.) Under the last column showing proposed revenue you have 89 cents for a one-line haul intrastate, which is less than 2 cents per hundred pounds; we arrive at that as shown in the detail of exhibit leading through pages 2 to 8, and from there back to Ex. 11. We

have some rates that are lower than the Lowrey basis and will remain lower than that under our proposals. In Illinois we propose to keep less than 3 cents on one-line hauls on the Chicago Junction Railway, which were excepted from the decision of the Interstate Commerce Commission. [fol. 1165] (Tr. 2427.) The one-line hauls via the Junction Railroad could only be intrastate. (Tr. 2428.)

Mr. Walter: Are the carriers here asking the Commission, as a result of this investigation under Section 13, to permit any one-line hauls in the district of less than 3 cents?

A. I think perhaps that is a question for counsel.

Mr. Walter: All right, then; will counsel answer the question?

Mr. Davis: I will answer it by stating that we do not intend to permit any rate lower than the Interstate Commerce Commission has established on interstate traffic. If the decision of the Commission includes interstate traffic for one-line hauls at a 3-cent rate, then all of the Illinois and Indiana interstate traffic should go to 3 cents.

Mr. Walter: Well, I am asking here for a statement which is specific, without any ifs, ands or buts about it (Tr. 2428.)

Examiner Faul: What do the carriers propose in connection with the Chicago Junction Railway, Mr. Davis? (Tr. 2430.)

Mr. Davis: If the Examiner, please, that is what I am trying to explain, that I thought they were exempted from the order of the Interstate Commerce Commission on interstate rates. Of course they could not be involved, as Mr. Walter says, in regard to the single line, and therefore we could not, as far as the state traffic is concerned, ask for anything higher than what the Interstate Commerce Commission permitted on the Chicago Junction. (Tr. 2430.)

Mr. Walter: Did not your petition seeking this investigation, Mr. Davis, set forth that you desire to have established throughout the territory, one-line rates of 3-cents?

Mr. Davis: We asked to have, as I remember the reading of it, we asked that we be required and directed to charge on intrastate traffic in Indiana and Illinois the same [fol. 1166] rates which were applicable under the decision of the Commission in Docket 19610 on interstate traffic.

Examiner Faul: The decision of the Commission in 177 I. C. C. 669, page 697, contains the following statement: "In view of the nature of these movements"—referring to the Chicago Junction—"most of which are purely intra-plant and all intrastate in character over comparatively short hauls, they cannot be considered as representative of the movements in general throughout the district. We accordingly make no findings as to this particular traffic."

Mr. Walter: Yes, but I want to know now from the carriers, if the Examiner please, what the carriers think the Commission should find; in other words, what they propose. Are they going to treat the Chicago Junction differently from other roads? Are the shippers on that line, with a haul of one-half mile, to have one rate and shippers on other lines with a half-mile haul to have a higher rate? We are entitled to know what they propose. Discrimination is what they are trying to remove. * * * We have the Illinois Northern, the Pullman Railroad, the Chicago, West Pullman & Southern, and several lines like that, and every one of these other lines have hauls of no greater extent than those on the Chicago Junction, and in addition, the Chicago Junction is a part of the New York Central system. (Tr. 2431-2432.)

Examiner Faul: Mr. Davis, are you prepared to state at this time what the carriers propose to do in connection with the Chicago Junction Railway?

Mr. Davis: Not any further than I have, if the Examiner please. I may have a statement later—but as I understand it, in a 13th section case of this kind, unless the Interstate Commerce Commission itself passed upon the rates, we would not have any standing before the Commission.

[fol. 1167] Mr. Walter: Well, do you desire then to modify your case and to state your position now to be that you do not expect or ask relief from the Interstate Commerce Commission in connection with any one-line rates that are not—where the one-line does not have one-line interstate rates?

Mr. Davis: No, I do not. I perhaps will have a statement to make later in regard to that point. I have not given it any consideration until Mr. Walter raised it here, other than what I have stated. (Tr. 2432.)

Cross-examination of witness, continued:

Chicago Junction Railway figures are included in my Exhibit 99. (Tr. 2432.) Wherever rates shown in the proposed revenue, column No. 17, Exhibit 99, are less than 60 cents for a single-line haul, it is due to the inclusion therein of revenues to the Chicago Junction Railway which we do not propose to bring up to 3 cents, according to my understanding. But wherever there are two-line hauls less than 70 cents, it is not due to the Chicago Junction situation. The rate of 69 cents on brick and artificial stone, on page 4 of the exhibit, next to the last item, is due to the disposition of fractions, the same as 71 cents may be due to such disposition. I do not understand that we propose anything on two-line hauls other than a rate of 70 cents, and that would include business originating or terminating on the Chicago Junction Railway, two-line hauls or three-line hauls, either 70 cents or 80 cents. (Tr. 2433.)

Referring to the same rates in Indiana for two-line hauls as high as $1.30, and in Illinois as high as $1.13, there are some rates, or rather there is some traffic included in here, that was over the Lowrey basis originally, and remains over. I am not qualified to say that that is just as much [fol. 1168] a violation of Section 13 as the relationship of which the carriers complained. I would not say that an intrastate rate higher than the interstate is just as much a discrimination as if it were reversed, if it has existed in the past and no complaint has been filed about it. (Tr. 2434.) That situation is evidently permissible because it has never been declared unlawful. I do not see anything improper in having a higher intrastate rate of $1.13 for handling sheep and goats while interstate they can be handled at 3½ cents per hundred pounds or 70 cents per ton. It is wrong in having 50 cents for the intrastate and 70 cents for the interstate for the simple reason that the Interstate Commerce Commission has seen fit to increase our rates to 3, 3½ and 4 cents on the interstate traffic. The intrastate rates were not raised correspondingly.

In asking for a 13th Section order here, the fact that we have higher rates intrastate than apply interstate, it seems to me is self-explanatory. I think that is all the answer that is necessary. (Tr. 2435.) The only other answer I can make is what I said before, that there was evidently no

discrimination existing prior to the 3, 3½ and 4-cent rates and I see no reason where there should be any today with the higher intrastate rates. I do not think a difference in the length of haul should warrant a difference in the rates on switching business. Indiana intrastate, with its average haul of 6 or 7 miles, ought to pay as much as Illinois intrastate, with twice that length of haul.

Exhibit No. 100 shows the Chicago Heights situation and is identical with the previous exhibit, which related solely to the Chicago district. (Tr. 2436.) The carriers are not asking any different rates between Chicago Heights and [fol. 1169] Chicago than apply within the Chicago district in this proceeding. The exhibit shows that it is quite proper to have the same rates between Chicago Heights and the district as apply within the district, but I do not know that I am in a position to say that that is my position. I do not necessarily have a position in the matter. I received certain instructions to prepare this information and have done so. (Tr. 2437.) We propose, and I think the Commission should establish, the same rate within the district as between Chicago Heights and the district for the number of lines involved. (Tr. 2438.) I mean two-, three- and four-line hauls. There are no one-line hauls. The Baltimore & Ohio Chicago Terminal reaches Chicago Heights but it does not serve Chicago Heights. The Chicago Heights Terminal Transfer Railroad serves Chicago Heights. (Tr. 2439.) There are no industries on the Baltimore & Ohio Chicago Terminal. (Tr. 2439.) It is possible that a man could deliver carload traffic to it on team track. I say the rates between Chicago and Chicago Heights and points within the Chicago district should be the same for two-, three- and four-line hauls as for one-line, because the industries in Chicago Heights are served by the Chicago Heights Terminal Transfer Railroad. I understand that road serves all the industries. There would not be any one-line haul between Chicago Heights and Chicago, but if there was, it would be the same rule as applies within the district. If there was any one-line haul between Chicago and Chicago Heights my personal answer is that it should have the same rate as applies for one-line in Chicago. (Tr. 2440.)

The purpose of Exhibit 101 is to show loss in revenue that accrued to the carriers during the test week November

9 to 15, 1931, and the expansion of that to a year's figures, [fol. 1170] due to the failure of the state commissions to permit the interstate rates to become effective on the intrastate traffic. That assumes that the carriers would have the business on the higher rates, and we have the business. But it assumes that traffic would move on the higher rates and move by rail, too. (Tr. 2441.) I do not think there is any danger to the carriers at all from the trucks, not any more than there is any place in the United States. There certainly is truck competition, we know that, and we know that we are losing business to the trucks all over the United States, but as we raise the rates we do not necessarily increase that loss. We took November 9 to 15, 1931, as the test period for the reason that we wanted a period immediately prior to the effective date of the Interstate Commerce Commission's order, which was effective December 10th. Making the test, we asked all carriers to submit information to us, based on originating the traffic. I believe there are 35 carriers in Chicago, and all reported. (Tr. 2442.)

We gave them forms to report on. That is a copy of such form here. (Said document offered and received in evidence, marked "Exhibit No. III, Witness Vivian.") (Tr. 2443.) This is the same form that we had in the original traffic test for September, 1926. The entire blank was filled out by the originating railroad; and under the heading "Line Haul" would show whether one-, two- or three-line hauls. (Tr. 2443.) As to the Pennsylvania-Indiana Harbor Belt service on the River Junction, we would treat it as a two-line haul if both handled it, and if only one handled it from origin to destination, it would be one line. (Tr. 2444.) As to the traffic moving from an industry by the engine of the Pennsylvania Railroad, for which service the Indiana Harbor Belt pays the Pennsylvania, if for operating convenience the one switched [fol. 1171] for the account of the other, that car would have been reported by the railroad in whose accounts it lodged, and the matter of operating convenience would not enter into it at all. If the Pennsylvania switched an industry for both itself and the Indiana Harbor Belt, for operating reasons (Tr. 2444), and if they set a group of cars on the Indiana Harbor Belt track for further handling, the Indiana Harbor Belt agents would take those

cars into their records and the Pennsylvania agents would not. It would depend entirely on whether it was handled to destination by the Indiana Harbor Belt as to whether it would become a one-line, two-line or three-line proposition. (Tr. 2445.) If the Pennsylvania moved the car from an industry to 108th Street yard, and the Indiana Harbor Belt got the car there, took it out and issued its way bill, it would be treated as an Indiana Harbor Belt movement throughout, provided the engine is a joint engine that handles business of both of the railroads. If it was a Pennsylvania engine the bill would lodge and would originate in the agent's office of the Pennsylvania. My first illustration was one where, for operating convenience, one railroad does all of the switching work in the plant.

I heard in part Mr. Jacoby's testimony about how they handle the River Branch. (Tr. 2445.) I am not altogether certain as to just what Mr. Jacoby said about this Pennsylvania switch engine switching the industry and taking the car to 108th Street or 112th Street and then the Indiana Harbor Belt taking the car from there; and I am not familiar enough with the situation in that particular carrier's territory to know whether the Pennsylvania engine is operating for account of both of the railroads for operating convenience or whether it is an independent operation. If it is an independent operation it is a two-line [fol. 1172] haul, if the Indiana Harbor Belt terminates the car. (Tr. 2246-2447.) If the Pennsylvania operates there for the benefit of both carriers as a matter of operating convenience, then it becomes a joint locomotive and it becomes a one-line haul of the Indiana Harbor Belt. It was not necessary to issue instructions to the agents as to filling in the form so that we could determine what was applied. We did not issue such instructions. (Tr. 2448.) I do know what rule they applied, and have information as to whether the traffic moved from the fact that I have reports from the agents that the shipments moved, and I had personal information as to the correctness of the reports, because we had them all reviewed. (Tr. 2448.) They were reviewed by traffic representatives. I received the reports from the agents and had them checked by the traffic representatives of the various railroads, and I know that they checked all of the reports. (Tr. 2449.) The fact that agents are not in the habit of prevaricating to us, and that

they are in responsible positions, does not give me the assurance that they cannot make mistakes. (Tr. 2450.) I personally know that the traffic moved in accordance with the reports made as shown in Exhibit No. 101. I know I received the slips and the slips showed that the cars moved. Naturally I am not going out into the yard to find out whether or not a car moved. (Tr. 2450.)

We are here submitting the information we asked for, asked the reports on, and that we received the reports on when the traffic moved, and I only know that it moved according to that slip. (Tr. 2452.) I know the traffic moved. (Tr. 2453.) In so far as the Milwaukee Railroad is concerned, I went out and checked the records in part myself. Aside from the records of our own company that I checked, I had the assurance of the various agents that the traffic did move, in some instances their personal assurances. An- [fol. 1173] swering your question as to where we did not have the assurances, the answer is that we have the slips indicating that the cars moved. (Tr. 2453.) I had no other information than that. We did not take the matter of the test up with the shippers to give them an opportunity to participate in it so that no question would arise about the nature of the test, because we did not feel there would be any question about it anyway. I do remember that such request was made to counsel. (Tr. 2454.)

Page 1 of the exhibit, covering movement November 9th to 15th, does not contain any figures as to interstate movement. The $3,094.04 for one-line hauls is the difference between the present and proposed revenues shown in columns 5 and 6 on page 1, in the top block, one-line hauls (Tr. 2454); and is the difference between 31 cents per net ton revenue collected and the proposed revenue of 60 cents. This did not include Chicago Junction one-line hauls. The Chicago Junction one-line hauls are the only ones not included in the exhibit. It did not report one-line hauls. We did not ask for it. We made a different request of the Chicago Junction Railway than we did of the other lines. We exempted the one-line haul of the Chicago Junction. (Tr. 2455.) We made no other exemptions. There was no written exemption or any written instructions to the Chicago Junction Railway. (Tr. 2456.) I directed that the Chicago Junction Railway be exempted for one-line hauls, on instructions from our counsel; counsel for re-

spondents. The committees handling this case for the carriers are the same committees that functioned in the original case; practically the same personnel. (Tr. 2456.) So far as my accounting committee is concerned, Mr. Saur is chairman of it; the other two members of the Steering Committee are Mr. Hurd, connected with the Belt Rail-
[fol. 1174] way, and Mr. Murphy of the Elgin, Joliet & Eastern.

There is a Legal Committee, composed of Mr. H. I. Allen, Mr. J. R. Barse, D. P. Connell, J. N. Davis, P. F. Gault, James Stillwell, H. D. Sheehan and E. A. Smith. (Tr. 2457.) Mr. Allen is with the Elgin, Joliet & Eastern; Mr. Barse with the Belt Railway of Chicago; Mr. Connell with the New York Central, the system, if you wish to call it such; I do not know that it includes the Chicago Junction Railway, but presume it does. Mr. Davis is with the Milwaukee; Mr. Gault the Chicago & North Western; Mr. Stillwell with the Pennsylvania; Mr. Sheehan the Baltimore & Ohio Chicago Terminal, and E. A. Smith with the Illinois Central. (Tr. 2458.)

There is a traffic committee, but I cannot name the members; I do not know that I know who they are, and I could not tell you the number of members. I think I can safely say that the traffic committee consists of the Chicago Switching Committee, of which Mr. Galligan is chairman. The Elgin, Joliet & Eastern is not a member of the switching committee, but it is represented on all the committees. (Tr. 2459.)

In arriving at the present revenue in this exhibit, we computed it on the billed weight and at the rate on which the shipment moved. (Tr. 2459.) In November that was the rate prior to the increase, and in January it was excluding the 10 per cent increase. We eliminated the 10 per cent increase in order to keep the two periods on a parity. The increase shown in the exhibit pertains to the increase to the 3, 3½ and 4-cent rates, and not to the 10 per cent pool revenue. (Tr. 2460.)

We arrived at the figure $266,727.59 as the estimated annual net loss by basing it on the volume of business handled
[fol. 1175] for the year 1931, and the week's relationship to that volume of business (Tr. 2461), which was 1.16 per cent. If it had been in the normal relationship of one week to the year, that would have been 1.52, or about 1.91

per cent, or something like that. (Tr. 2462.) We feel the week was representative of the level of business that existed in 1931. We feel that if we had taken the business of the week of November 9th to 15th and gotten the revenue, that it was representative of the year's business, and yet we have to multiply by about 80 instead of 52 to get that, because the revenue of the carriers has been sliding down hill from January 1, 1931, to December 31st of the same year. (Tr. 2462.) We did not take this one week as representing 1/52 of the annual business because we tested both weeks out on the same basis and found one to be 1.16 per cent and the other 1 12 of the year; that is, the September, 1926, month was found to be 1/12 of the year on exactly the same basis that the week of November 9th to 15th was found to be 1.16 per cent. I have not gone into the cost of it at all in reaching this figure of $3,094.04. The same percentage relationship applies throughout as between the week column and the estimated annual loss that I have just given on Illinois intrastate one-line hauls. (Tr. 2463.) The percentage was not arrived at by taking an individual report as to one-line hauls and as to two-line hauls and as to three-line hauls for each of the 35 carriers. It could not be done that way because the information is not available. You have to take it as a whole. If we could have had the set up such as you speak of, we could have presented an entire year's traffic test instead of one week. In arriving at the 1.16 per cent I requested each road to give a statement of the volume of carload traffic which it originated, moving entirely within the Chicago switching district, one-, two- and [fol. 1176] three-line hauls combined. Each road has that readily available. They do not have any separation between the one-, two- and three-line hauls. The report made to me was for the individual cars. We have the entire year's volume of business by cars. (Tr. 2464.)

To get the 1.16 per cent we divided 3,533 cars moving during the week of November 9th to 15th by 303,569, being the entire year's switching business on all of the roads in Chicago. This had nothing to do with switching that is absorbed, being based on carload freight originating and terminating in the Chicago switching district; the cars handled in switching service by each of the lines. (Tr. 2465.) This did not include the one-line cars of the Chi-

cago Junction. (Tr. 2465.) The 303,569 cars are the total figures furnished me by all lines, which is all that is available. It includes all of the switching business of the Baltimore & Ohio Chicago Terminal for the year, which had the consignor and consignee both within the switching district. Most of my requests or instructions were given mostly by telephone. (Tr. 2466.) There was no way to check these figures. The figures as to total cars include all business, both state and interstate. There is no way to determine whether it is interstate or intrastate, either for Illinois or Indiana. (Tr. 2467.) The 3,533 cars are not exclusively intrastate.

Page 1 shows the total of the combined Illinois intrastate and Indiana cars as 1,592, while for the entire week we show 3,533, which includes both intrastate and interstate. We could not apply the percentages of intrastate because we did not have the information available for the year on a separation between the interstate and intrastate. (Tr. 2467-2468.) Page 2 simply gives the details so that [fol. 1177] the various steps in accumulating this data may be readily followed through the various recapitulations. (Tr. 2468.)

Page 1 of the exhibit contains all that the Commission need consider, the other being simply supporting data. Page 1 is the recapitulation, and back of it are all of the details leading up from the individual slips of the individual cars. (Tr. 2468.) From the data contained on page 2 you can compute the same loss from them that appears on page 1, and they are offered to show the entire story. (Tr. 2468.)

You cannot entirely find from page 2 the fact that 1328 cars moved intrastate in Illinois in the week of November 9th to 15th. We have shown on page 2, 261 cars as the first item there of the three, which make up the 1328, and the purpose of this information is to show what those 261 cars were and to satisfy your demand, because we knew you would ask for it if you did not get it. We felt it was necessary to show this to support page 1 of the various details, in order that the Commission might have all of the picture. I know the cars moved (Tr. 2469), and I told you some time ago the way I knew. (Tr. 2470.) The following pages of Exhibit 101 are all recapitulated into the first page.

Exhibit 102 does not differ from the preceding one other than it applies between Chicago and Chicago Heights dis-

tricts, while the other one applied within the Chicago district. I applied the same percentage there that applied in the intra-district traffic, and the only difference between Exhibit 103 and 101 is that it applies to a different week, and it excludes Ex Parte 103 revenue. There is no practical way to determine as to what extent the estimated annual net loss shown in Exhibits 101 to 104, inclusive, could be reduced by giving credit to the 10 per cent increase in the switching district, unless the 10 per cent is of such a [fol. 1178] nature that it can be applied direct to the present revenue column, in which case you could add 10 per cent of that figure, bearing in mind, of course, that the week is a different percentage of the year. (Tr. 2470-2471.) In arriving at the estimated annual net loss on page 1 of Exhibit 103, I have applied the percentage of .97, and that was determined on the same basis by taking the week's business, compared to the entire year of 1931, as stated in my direct testimony, and the week of January 11th bears the same relationship to the business of the week of November 9th that 1.16 per cent bears to .97 per cent. (Tr. 2471.) Estimating what the railroads have lost by the action of the State Commissions, based on the test week of January 11th, has nothing to do with any business moving in September, 1926. There is no connection with the previous exhibits dealing with that, other than the fact that this exhibit is built along similar lines. The data on pages 2 to 32 are offered for the same purpose as the pages in the preceding exhibit, following page 1 in that exhibit; and Exhibit 104 is offered for the same purpose as Exhibit 103, other than the one is the showing between Chicago Heights and Chicago, and the other is within the Chicago switching district. (Tr. 2472.)

The purpose of Exhibit 105 is to show the blockading of traffic, by which I mean the fact that with the increase in interstate rates, business was routed away from the interstate routes to take advantage of the lower intrastate rates, which resulted from failure of the two state commissions to recognize the interstate rates of 3, 3½ and 4 cents as an equitable basis. (Tr. 2472-2473.) I mean routed by shippers or marked to protect intrastate rates, which meant we were forced to move the business by intrastate routes. I did not say that the shippers routed all of the movements via the intrastate routes. As I just ex-

[fol. 1179] plained, they were partly routed by the shippers. (Tr. 2473.) My statement was that interstate traffic was blockaded in one of two ways, either by routing or by marking on the bill of lading to protect the intrastate rate; and that the adoption of one or the other of those two methods by the shippers was the reason for the routing via intrastate routes. My making this statement is based on the fact that I have seen possibly a dozen bills. (Tr. 2474.)

Exhibit 103 shows 1499 cars moved intrastate in each period, and in saying that each of those cars contained one or the other of the notations, either to route via or protect the intrastate rate, I have been advised that that was done, by various agents whom I cannot name. (Tr. 2475.) I would not say the agents said one or the other of those notations was on every bill, but they did say in various conferences at Chicago that the business was being routed intrastate, specifically routed, or was being marked to protect the intrastate rates. It is my understanding that the carriers would not put the notation on the bill of lading or would not route the traffic intrastate unless the shipper insisted upon that course. (Tr. 2476.) That understanding is based on the statements made to me in conferences with the agents in Chicago. (Tr. 2476.) I do not know that I can give the names of any of the railroads represented by those agents. (Tr. 2476-2477.)

Examiner Faul: I think it is important to know whether or not these shipments were routed by the shippers. I understood when the exhibits were filed by Mr. Vivian that the red line routes represented the routes that were designated by the shippers. (Tr. 2477.)

Now, if that is not the case, I think the carriers should inform us before the hearing is over, by examining the [fol. 1180] billing to see whether or not these shipments were specifically routed, and if not, whether the carriers have changed their policy in routing their shipments subsequent to December 10, 1931. I had in mind particularly Exhibit No. 110. (Tr. 2478-2479.)

The Witness (continuing): I said interstate commerce was blockaded because the shipper in every instance did one of two things, either marked on the bill of lading "Route via the intrastate route," or "Protect the intra-

state rate." I did not say that the bills I saw were only or necessarily on the week's business. I did not say 1449 cars moved under a bill of lading where the shipper had stated one or the other of those things. (Tr. 2479.) I said the blockade to interstate commerce was brought about by shippers routing the traffic via the intrastate routes, and that was established by a notation made by them on the bill of lading, and I know that because I have seen various bills and have talked to the agents, as I said before; not for this week's business. I have not said that the shipper made any statement that he required the particular movement or the particular rate to be protected, or advised the carriers of any such thing as that. (Tr. 2480.) I say interstate traffic was blockaded because the increase in the intrastate traffic in November—in January, is offset by a corresponding decrease in interstate traffic in January, which shows a different complexion in the handling of the business in the two periods. In making this statement I have taken one-line hauls against one-line hauls, two-line hauls against two-line hauls, and three-line hauls in the same way, just as my exhibit indicates, these hauls being in the aggregate. (Tr. 2481.)

The comparisons of the various volumes of traffic as to various types of commodities are shown in all of the pages [fol. 1181] in the back part of this exhibit for both periods. We give the details of intrastate traffic in Exhibit 101 and Exhibit 103 for the Chicago district. We compare, on pages 2 and 3, the two periods in the aggregate for one-line, for two-line and for three-line hauls, and have shown the proportionate decrease in the aggregate tonnage. (Tr. 2482.) I do not believe there is much varying character of the tonnage from what I can see of it, but naturally we do take that into consideration in considering the aggregate tonnage. I consider the total tonnage moved as the only factor in arriving at the statement that there has been a blockage of interstate traffic. (Tr. 2483.)

On page 2 of Exhibit 105 we show 261 cars of intrastate Illinois one-line traffic, and the details of those are given in Exhibit 101 and are the ones about which you questioned me. You will find them on page 2, 261 cars, and the various details by commodities on pages 3, 4, 5 and 6; you will find the details as to this group of cars under the various rate groups. (Tr. 2483.)

Page 2, Exhibit 101, shows 261 cars, Illinois intrastate, of which 67 were wheat. On page 2 of Exhibit 105 we show 855 cars interstate one-line, and the details of those cars are shown on page 4 of the Exhibit, 105, and no wheat is shown on that particular page. As to whether there was a blockade of wheat, you will appreciate the fact that those are both November statements, but that is all I have to go by. The January details are given in the corresponding exhibits. (Tr. 2484.) The January details are given on page 19 of Exhibit No. 105, and to show the boockade we would contrast that with the November one. The 712 cars shown on page 19 are interstate, and the 855 are interstate, and there is no wheat shown on either page 4 or page 19. I have no information to enable me to tell from what con-[fol. 1182] signors to what consignees the traffic that had moved interstate was changed to intrastate. (Tr. 2485.) I have no information in my possession to give the Commission from which it could find that business that moved interstate had been lost to somebody intrastate by reason of this rate situation. (Tr. 2485-2486.) In making this statement it is my understanding that that statement would apply to the carriers as a whole, and they are making no contention that the business of somebody interstate has been taken by somebody else intrastate, due to the change in rates; there must have been some of it, however. We make no contention as to that as a basis for setting aside the lawfully constituted rates of the State of Illinois and the State of Indiana. The purpose of Exhibit 106 is the same as 105, except that it applies between Chicago Heights and the district, instead of within the Chicago district, and Exhibit 107 is to bring down to date the conditions of the switching carriers. (Tr. 2486.) The Chicago Junction Railway is not included there because it was not a part of the studied railroads. Exhibit 107 deals only with the carriers that were in the cost study, and I have made no study of costs subsequent to 1927, so far as this case is concerned. I do not remember the number of industries on the Pullman Railroad that were studied. I could not tell without looking it up. The exhibits introduced in the original case must speak for themselves in that connection. The Illinois Northern was studied. We did not study all the short lines except the Chicago Junction Railway. (Tr. 2487.)

Mr. Walter: Has there been any objection by the Chicago Junction to giving this data? In other words, is the failure to include the Chicago Junction due to the conclusion of the committee handling the matter, or is it due to the fact [fol. 1183] that the Chicago Junction Railway does not want to come into the cost study and does not want to furnish the data?

Mr. Davis: Just a moment, if the Examiner please. I object to that question. He is getting into matters urged for the reopening of the case and a cost study. The question of a cost study on the Chicago Junction arose as many times as there were hearings in the original case, and it has arisen every time we had a meeting in this case. Our answer is still as it was originally, that the Chicago Junction was not one of the roads on which a cost study was made, and we do not propose to make one now. (Tr. 2488.)

The Witness (continuing): The purpose of Exhibit No. 108 is to show the same trunk line carriers that were in the original study, and the information therein, and is given to the Commission to show the trend of their conditions since the cost studies were made in 1927. Those are system figures, and naturally we do not have any separation of Chicago from the rest of the system; but it does show that as to the carriers that are parties to the switching study, their condition is growing worse insead of better. That is true, as a matter of fact, of every shipper in the Chicago switching district I suppose, because the entire nation is that way at the present time. I was referring to Exhibit 108. (Tr. 2489.) Exhibit 108, dealing with the trunk lines, shows total cars revenue freight, which includes switching cars, and if it moved off the Burlington onto the Milwaukee the car would be counted each time that it has been handled; there is a duplication of figures in there, but the same duplication exists year by year, and the intradistrict switching cars are included in the 14,149,865 for the year 1928, and the same with each of the other years. (Tr. 2490.) This was compiled from the annual reports to the [fol. 1184] Interstate Commerce Commission, made by these various carriers. If I had the annual reports I could tell you the items and pages they were taken from. I will be very glad to furnish this with a view to telling whether it includes intradistrict switch cars not in connection with line haul. (Tr. 2491.)

The purpose of Exhibit 109 is to show the condition of carriers in the United States, of which these roads entering Chicago are a large part. It is not so remote that I do not see why it should not be considered in connection with the issues in this case. (Tr. 2491.)

Mr. Walter: Well, what does it—what contention does it support? That the interstate rates have brought about this discrimination between state versus interstate, or what it is offered for?

Mr. Davis: I can tell one reason why it is offered, although we are not going to be confined to any one reason; that is, that as the operating ratio increases, it costs more per unit to handle the business than it does where the operating ratio decreases; that where the rate of return is high, you will find, as a rule, the operating ratio is low. What we want to show is that under these changed conditions it is costing more per unit to handle this business, and that is true of the country as a whole. (Tr. 2492.)

The Witness (continuing): Well, the same situation exists in the entire United States as exists on the individual roads, as shown in the two previous exhibits, as stated in my original testimony. I have given the switching roads involved, but not all of them, but I have given all that were involved in the original cost study. I prepared Exhibit 110 (Tr. 2493-2494), and obtained the data from which it is prepared from the various agents either of originating or [fol. 1185] terminating lines. I do not remember who may have reported them, or the terminating carrier. I believe it was a fairly even break between them. From the nature of the work it was difficult to obtain a complete statement, and I know that we have not got a complete statement. Our check list was not complete when we closed the exhibit. I believe it happens that the Pennsylvania in this was always either the originating or the delivering carrier because of its geographical layout. But the sole reason was not because the Pennsylvania's yard was bisected by a state line. (Tr. 2494.) We had no thought as to individual railroads that were involved when we asked for this information. We asked the agents of all the lines to furnish the information. We had reports from carriers other than the Pennsylvania, the New York Central and the Indiana Harbor Belt; we had both the originating and terminating lines reporting, in some cases, and we threw them out. I could

not tell how many were thrown out, but it was more than we used. I could not say how many times more, but know it was a very large volume of slips that we did not attempt to set up. The purpose of this exhibit is to show rerouting by the shipper. (Tr. 2495.)

Every one of the cars shown in this exhibit was either routed by the shipper or marked to protect the intrastate rate, and I say that because that is the basis on which the instructions were issued, and I assume they complied with my intructions, which were not in writing, but given verbally to the various agents in Chicago by the committees. The instructions were given to the railroad station agents. (Tr. 2496.) There are a large number of them in Chicago. We had various meetings with the agents at which they were told what was wanted, but I have no means of telling how many of the agents made report. These meetings were [fol. 1186] all subsequent to December 10th, and I believe in the first part of January. (Tr. 2497.) At the time of these meetings they were specifically instructed not to make reports except where the bill of lading showed routing by the shipper via the intrastate route, or a notation to protect the intrastate rate. If we have included in the exhibit shipments not moving under that sort of bill of lading, it would be incorrect to that extent, if the shipments moved interstate. If it was an ordinary intrastate movement we did not intend to include it in the exhibit. (Tr. 2498.)

The data as to the rates under the column "Actual Route" and "Normal Route" was furnished and checked by rate men. If the rate is the same via actual route and the normal route it still might be proper to include the shipments in the exhibit; but I cannot imagine there being such thing unless there happened to be some intrastate rates the same as the new interstate rates; which I have some reason to doubt. The items on page 2 of the exhibit, showing shipments between points on the Pennsylvania where the rate is 3 cents via actual route, and the same via normal route, indicate that there must be intrastate rates of 3 cents in effect today. (Tr. 2499.) This exhibit was prepared to show loss in revenue, but even though the rates via the two routes should be the same, the shipments should not necessarily be excluded from the exhibit, because if the shipment was marked to protect an intrastate rate, and it moved that way, there would be greater cost intrastate than the normal

route. I know that from the nature of the situation. I gave an illustration in connection with Exhibit A, or rather illustration A, in my direct testimony. (Tr. 2500.)

Referring to illustration N, I could not tell you at the [fol. 1187] present time whether the movement via the red line is more expensive or more costly to the carriers than via the black route. (Tr. 2501.) As a matter of fact, I cannot tell you as to any of them at the present time. The fact that the exhibit shows that 5 industries either shipped or received 784 cars out of a total of 856, is, I think, representative of what the carriers are being forced to do under the present situation in connection with the rates (Tr. 2501); that is, the larger industries naturally handle more business than others, from the nature of them; they have a larger volume of intraterminal traffic and it is only natural to assume that the larger industries would have a preponderance of the business, and I do not know that the exhibit, which is supposed to reflect the escape from interstate rates, would be any more true in the case of a large shipper than it would in the case of a smaller. I do not know that the statement reflects any different condition than would be the general condition if we had all of them. (Tr. 2502.) I made no inquiry as to cars shipped by these same industries intrastate, that are not included in this exhibit. I did not make inquiry, nor was my attention directed to the fact, that the great bulk of this business moved to and from industries served jointly by the Pennsylvania and the Indiana Harbor Belt, with the Indiana Harbor Belt's line for the movement being intrastate in its entirety, and its method of handling being intrastate. (Tr. 2502.) Aside from the movement of those particular cars via the particular routes, as shown on the map, I did not make any investigation as to cost, character of service, or anything of that kind. The way the balance of cars on pages 2, 3 and 4 moved, in general, the various diagrams would present a picture very similar to the way the cars actually moved. I did not make [fol. 1188] any investigation as to the number of different routes open under the tariffs and the physical layout from consignor to consignee. The tariffs will have to speak for themselves as to the method of routing (Tr. 2503), but from my own knowledge I could not tell what route an industry might have used where there are several routes open. (Tr.

2504.) I do not know whether these shipments could have moved wholly intrastate via lines other than the Pennsylvania. (Tr. 2504.)

In illustration A I have taken our cost elements in the cost study and placed them against the black line and against the red line, $21.78 as against $10.44. I cannot tell what it would have been if the cars on the River Branch of the Pennsylvania Railroad had moved out via the Indiana Harbor Belt from the 108th Street yard or 112th Street yard, or moved in via that route. I have not followed cars via any of those routes, and if any of those movements are in the original exhibits in this case, they will have to speak for themselves. The normal route of every Pennsylvania car shown as moving in and out of Colehour yard is because that is their main classification and train yard, and that use was built around the convenience of the Pennsylvania or the method of handling it, used prior to December 10th. (Tr. 2505.) I did not follow cars moving via other roads or ascertain that they have not changed their routes. Naturally every road varies according to its physical layout and I do not know whether the situation shown by the Pennsylvania is the situation on other roads. (Tr. 2506.) Taking Exhibit 110 showing shipments that would formerly have moved via the Pennsylvania Railroad through its Colehour yard, and which it today handles via the intrastate route, I would say that the Pennsylvania does not of its own volition handle them via [fol. 1189] the intrastate route, because it would handle the car the most economical way, which is via Colehour yard unless it receives orders to do otherwise. (Tr. 2507.)

Mr. Walter: Mr. Stillwell, will you furnish Mr. Kelly, yard clerk of the Pennsylvania at Colehour Yard, as a witness? (Tr. 2508.)

Mr. Stillwell: I do not know whether we will or not.

Mr. Walter: The statement has been made here that the shipper in all cases on the bill of lading, makes the notation and I am going to show by Mr. Kelly unless my information is entirely incorrect that within the last few days he has told some of my clients that the shipments will move via an intrastate route; that is the way they send it so that they cannot compete with the Indiana Harbor Belt.

Examiner Faul: Mr. Vivian, your testimony indicates that except in the instances where the shippers specifically route these shipments via the intrastate route, the Pennsylvania railroad would handle those same shipments over the so called natural routes.

The Witness: That is correct, Mr. Examiner. That is my understanding of it.

Mr. Walter: And that is why I want Mr. Kelly here.

The Witness (continuing): (Tr. 2509.) I think we had cars moving on the Burlington but I do not know whether we have got any of them in this exhibit or not. I do not know of a change of routing on the Burlington to avoid application of interstate rates in the Chicago district or on the Illinois Central. I do not know anything about any of them other than has been furnished to me by the various roads and that is shown in Exhibit 110. My information as to the natural routes shown on the various charts was furnished by the station agents. (Tr. 2510.) I cannot tell what agent gave me the information as to illustration. A. I do not know whether it was the originating or the terminating man who gave it. The information was [fol. 1190] given me on the form. I haven't the blank forms. A large number of these forms were furnished and I may be able to get two or three of the blanks. There may have been during the period of these reports movements of cars via other routes than those shown in Exhibit 110 and the illustrations in the exhibit naturally are selected illustrations to a certain extent but I would not say that they are horrible examples. (Tr. 2511.) The operating representatives of each road reviewed the setups or the slips and checked the routes in each instance to make sure that the information had been furnished us correctly on both the normal and actual movements. (Tr. 2512.) I would not say that out of the many reports we had we picked out the illustrations which would best show that somebody, somewhere or some time would use the intrastate route rather than the interstate route. We actually know that these cars move and we have seen fit to illustrate 334 of them, and we complained because the shipper used the intrastate route. I do not know that it is a matter of concern whether the Indiana Harbor Belt or the Pennsylvania should handle this traffic, there are some of these where the same railroads handle it but they handle it in

different ways, (Tr. 2513) and we complain because they did not use the Pennsylvania, an interstate route, when there was an intrastate route open to them. (Tr. 2514.)

Examination by Examiner Faul:

The 334 cars mentioned are those represented in the illustrations, A to O, that is 334 cars out of a total of 856 referred to in pages 1 to 4. We did not follow any particular method in selecting the 334 cars. (Tr. 2514.) We had other illustrations drawn but on account of the expense of reproduction we limited the number to the 14 illustrations used. (Tr. 2514-2515.) I would say that the other illustrations would give more or less the same general [fol. 1191] picture as to the difference in the length of haul between the intrastate and interstate routes as shown in these illustrations; and, if anything, the unnatural route would be longer than the natural route on those which we have omitted. In the selection of the illustrations we tried to get the different types of movement and refrained from reporting movements which were similar in character such as illustration A. We might have had other movements to other points where the two routes, both the natural and the unnatural, were of similar character. We have omitted these and have tried to confine ourselves to a few illustrations that would be typical of the entire situation. We have only a record of 856 cars that moved state and interstate, during the period from December 10, 1931, to March 31, 1932, and I do not know what proportion of the entire movement that represents. (Tr. 2515.) We had 3,533 cars in November; that was the total of interstate and intrastate traffic originating and terminating for 1 week in the Chicago Switching District, and in the four months' period we did not have all of them because our check list indicated there were roads that had not reported and we have no one line haul cars of the Chicago Junction Railway. Referring to Exhibit 99, the figures under column estimated annual net loss includes items based on rates in excess of 3¢, 3½¢ and 4¢ prescribed for interstate movements. That is on both the present and proposed sides, Mr. Examiner, there are some rates that are over the Lowrey rates in both instances. (Tr. 2516.)

Referring to the specific items on page 4, the $1.13 rate referred to by Mr. Walter is a two line haul and under the

interstate basis would be only 70¢ and we are not asking for a higher intrastate basis than the 3¢, 3½¢ and 4¢ rates. (Tr. 2517.) There is some traffic included in the original [fol. 1192] test not affected by the decision; that is, it was over the Lowrey basis and it remains on the same level. I cannot tell you what that is but there is a group here "over Lowrey". (Tr. 2518.)

Examiner Faul: But the contention as to the former rates, the rates below the Lowrey basis would be raised to the Lowrey basis and those in excess of the Lowrey basis would be brought down to the general level.

Mr. Davis: That is correct.

Examiner Faul: Is that still your contention, Mr. Davis?

Mr. Davis: Yes it is, if your honor please. That might mean that from a team track it would not be affected by the Lowrey basis. I do not think they are according to the order of the Commission. We wanted certain team tracks excepted; there are other team tracks which the carriers desire to have on the same basis as at present.

Examiner Faul: Therefore, they should not have been included in this exhibit.

Mr. Davis: No, that is correct. They should not have been included.

The Witness (continuing): In both of the exhibits or in all three of the exhibits, there are cars of that character. You will find one here showing $1.20 and another 74¢ on page 12, Exhibit 101. (Tr. 2518.) There are others of that character that involve team track deliveries with a distance tariff applicable in one or two instances.

Recross-examination.

By Mr. Walter:

It is my understanding that the Elgin, Joliet & Eastern has reduced its rates. I do not believe that was required by the decision of the Commission. I cannot tell you why they reduced the rates.

[fol. 1193] Mr. Walter: Mr. Davis, are you going to have anybody here who can tell us that?

Mr. Davis: I had not counted on it.

Mr. Walter: I would like to have the record reveal the facts in connection with that voluntary reduction of rates which Mr. Vivian says he will be glad to have increased.

Cross-examination.

By Mr. Shaffer:

In exhibits 101 to 104 inclusive, the revenue losses shown are predicated on the assumption that all the state traffic would move on the increased rates or would continue to move if they were permitted to be increased and that all carriers operating and performing the intrastate service would eliminate their exceptions to the Lowrey basis. Exhibit 105 shows that during the period November 9 to 15, the percentage of interstate traffic was 54.94 per cent, (Tr. 2521) and for the period January 11 to 17, 50.75 per cent. I do not know the percentages of interstate and intrastate traffic in September 1926. Assuming that 40.3 per cent of the traffic in September, 1926 in the Chicago Switching District was interstate, I would still say according to the figures I show in Exhibits 105 and 106, there had been a blockade of the interstate traffic. (Tr. 2522.) If the 40.3 per cent is correct, some time in the period between September 1926 and January, 1931, the percentage of interstate traffic has increased but I would still say there has been a blockade of interstate traffic because I do not believe the September, 1926, situation is comparable with the present day situation, (Tr. 2523) in the volume of traffic or the flow of it in this business. I do not think that comparison should be made. If I had thought so, I would have made them. We used them in Exhibit 99 in order to bring the situation down to date on the old basis, in both traffic tests in order to present the situation as it exists in [fol. 1194] the volume of traffic in 1926 and the comparison of these percentages showed that change and the comparison was proper from the standpoint of comparison but not from the standpoint of the blockading of interstate traffic. (Tr. 2524.)

Examination by Examiner Faul:

I do not know whether there has been any change in the flow of interstate traffic since December 10, 1931 from the rail lines to truck movement or to water movement; not in any specific instance; I haven't any and I do not know of any. (Tr. 2525.) I do not know whether the traffic has changed since the ex parte 103 increases from rail lines to barge and truck movements.

Cross-examination.

By Mr. Brown:

The purpose of my Exhibit 105, page 1, is to show a greater proportion of traffic moving intrastate after the new rates went in than moved before. (Tr. 2525.) But it shows as to 1 line haul that the situation is reversed, and I do not know that I have any theory as to that. It is a scattered movement. I have not attempted to make any analysis as to why one line hauls are different from all others than to find that the movement is scattered. It just happened that way, I believe. I gave estimates on cost of service on the 2 lines on illustration A, switching service only and have added together the various items of service. (Tr. 2526.) I do not know that I will be followed by another witness who will testify as to the cost of service in this proceeding. (Tr. 2526.) I do not know that that particular thing is involved in this case. I understood not. It is a relationship proposition. (Tr. 2527.) It is my understanding that the measure of the Indiana and Illinois state rates is involved in so far as those rates discriminate as compared to the interstate rates and I do not know whether the measure of those rates is proper, [fol. 1195] and you have whatever I have prepared in that respect. (Tr. 2527.) In Exhibit 110, we omitted Indiana intrastate movements. I had not thought about it until you spoke of it. (Tr. 2527.) There is nothing in my testimony or exhibits concerning that phase of the case. I would excuse a higher interstate rate than one intrastate if there had been no complaint as to the former. The mere difference in two rates may or may not create discrimination. (Tr. 2528.) It depends on the situation how your rates apply, what they apply to and everything else. To illustrate, you may have two competitors with different rates in the same location, moving to the same markets and you have certainly got a discrimination in a case like that; but the mere difference in the rates without any question of competition or anything else, I do not believe would create an improper situation. (Tr. 2529.) Whether traffic moving interstate or intrastate, may have a bearing upon the cost of the service, depends entirely upon the movement. In the illustrations we gave the intrastate movement is considerably more costly than interstate.

That is, in the illustrations given there is a difference based upon whether the traffic moves state or interstate. (Tr. 2530.) I have not used 1926 cost figures as being illuminating in this case because I understand the costs are not involved and I have not testified to any costs in my direct testimony. Offhand, I do not know of any traffic movement intrastate in Indiana to which we propose or are willing to accept a rate lower than 3¢ for single line hauls. In my direct testimony the only costs I gave were those shown in illustration A which were switching costs only and they did not come under the heading of car detention as it was described in the Commission's decision. (Tr. 2530.) That cost was based on engine hour costs only; they were switching costs only. In reaching the cost figure of $20.48 we were given the various elements by operating represen- [fol. 1196] tatives and we brought them up from the switching costs that we had in the original exhibits in the case plus the information that was necessary from the operating representatives on the special service that was involved and that expense did not include anything for car maintenance, and I have offered no testimony thus far to show the cost of performing service in this district over intrastate routes either in Illinois or Indiana. (Tr. 2531.)

Cross-examination.

By Mr. Hufsmith:

In Exhibit 99, page 3, referring to single line Indiana, intrastate traffic, there are team track movements involved there. They are not all team track movements but team track traffic is included. I could not tell whether the item, pig iron blooms, covers team track movement. From the nature of the commodity, it would seem as though it would not be, but frequently you will find very queer commodities unloaded on team tracks. (Tr. 2532.)

In columns 16 and 17, we show the average revenue present and proposed per ton. Assuming that the commodities shown on page 3 do not move to a team track but are in fact one line hauls, Indiana intrastate, we are asking the Commisison to remove the discrimination now existing with the interstate rates by establishing the rates indicated in the last column on page 3. We have raised the pig iron bloom rate from 51¢ to 60¢ because 60¢ per ton

when converted per hundredweight is 3¢ and that is the interstate rate one line; (Tr. 2533) that is what the carriers did when their rate men rated them on the proposed basis. The same situation is true as to increasing the rate on sugar and syrup from 50¢ to 60¢. (Tr. 2533-2534.) The pig iron bloom rate for a 2 line haul intrastate in Indiana [fol. 1197] is left at 89¢ instead of 70¢, probably because of some team track movement in there. (Tr. 2534.) There is no change in either the present or proposed pig iron bloom rates referred to. They are both 89¢ and that is due either to team track delivery or to the fact that some peculiarity exists in connection with that particular movement of pig iron bloom. (Tr. 2535-2536.) I do not know whether it would be an intrastate movement or not. Both sides have included in this study the team track business and traffic that is moving at rates higher than the Lowrey basis and remain on that basis and I mean on both sides both the interstate and the intrastate. (Tr. 2536.) Referring to page 3 of the Exhibit, there are 20 commodities listed in 1 line, Indiana intrastate hauls and out of the 20, 14 are to be raised to the present 60¢ interstate rate for the movement. (Tr. 2536.) Taking bituminous coal, I cannot say why it was left at 12¢ when the present interstate rate is 60¢ but probably there is some peculiarity existing in connection with that particular type of commodity or particular movement. For some reason or other the traffic men or rate men have seen fit to leave coal on that basis but I do not know what enters into it. Of my own knowledge, I do not know why that was done. (Tr. 2537.) This was done by the various railroad rate men but not in conference. (Tr. 2537.) They went through according to the decisions and instructions that have been laid down by the attorneys and rated these various slips. I do not know how the 12¢ rate was established but probably by some exception as I stated before. I prepared this exhibit and that figure was given to me by some railroad and I do not know which one. There may be a clerical error in it. The railroads may have given me 60¢ on that. (Tr. 2538.) I doubt that I have at hand [fol. 1198] the data that was submitted to me when I compiled and prepared this exhibit.

Examiner Faul: Let me offer a suggestion that the carriers check over the exhibit between now and tomorrow

morning and advise whether these discrepancies between the 1, 2 and 3 line haul rates, that is, the difference between the 60, 70 and 80¢ rates, prescribed by the Commission and which they have contended for as the intrastate basis, represent an error in these exhibits or whether they are asking for a different basis.

Mr. Davis: We are not asking for a different basis. I can assure you of that right now, if the Examiner please. For single line hauls, we have asked for 3¢; 2 line, 3½¢; and for more than 2 lines, 4¢. Now, insofar as team tracks are included in the Lowrey basis, the same (Tr. 2539) basis of rates will apply to team tracks. Where team tracks are closed and are not included in the Lowrey basis, we do not ask and do not want the 3, 3½ and 4¢ for the closed team tracks and they should be eliminated from the exhibit if they are in there. If they are in there, there is evidently an error in this exhibit that Mr. Hufsmith and Mr. Vivian have been talking about and we will have it gone over and see if we can locate the errors.

Mr. Walter: I understand, Mr. Davis now to say for all of the carriers respondents herein that he proposes 3¢, 3½¢ and 4¢ without exception, except as to team tracks, is that right?

Mr. Davis: Leaving out the Chicago Junction. (Tr. 2540.)

The Witness (continuing): There is not in Exhibit 110, or any other Exhibit prepared or compiled by me showing any example of a movement wherein Indiana shippers have [fol. 1199] in anywise changed the routing of the traffic since the establishment of the interstate rates from what it was prior to that time. There is no reference to state Commissions on the cover page of Exhibit 110. (Tr. 2541.) Indiana is a portion of the Chicago Switching District. (Tr. 2542.)

A. E. Jacoby, recalled as a witness, testified as follows:

Cross-examination (continued):

By Mr. Walter:

I did not, prior to January or February, solicit the shipment and routing, of cars of billets from the Republic Steel

Corporation to the Acme Steel Company, via the Pennsylvania Railroad.

Examiner Faul: We will adjourn at this time until tomorrow morning, May 4, 1932, at 10 o'clock A. M. (Tr. 2543.)

Pursuant to adjournment, hearing reconvened at Chicago, Illinois, May 4, 1932, at 10 o'clock A. M.

G. F. VIVIAN, recalled as a witness, testified as follows:

Cross-examination.

By Mr. Cardy:

The 2nd page of Exhibit No. 99, item 35, dealing with clay, gravel, sand and stone shows 2,068 cars, but I do not know how those cars were divided as to clay, gravel, sand and stone nor do I know whether the larger movement was sand and gravel. (Tr. 2545.) The exhibit shows the average revenue is 33¢ per ton and the proposed revenue 51¢ per ton, but I have no knowledge of the present rates on that traffic other than is shown in the exhibit. The single [fol. 1200] line proposal is 60¢ instead of 51¢. I do not know whether 90 per cent of this traffic is stone, sand or gravel, nor do I know whether the proposed estimate is greatly understated. I have not considered it. (Tr. 2546.) The present average revenue per car on stone is $14.76, compared with present revenue on all traffic of $11.18 and on miscellaneous commodities of $6.99 and our proposal is for a flat rate regardless of commodities and I see no reason why the same rate should not apply to all of them. I think the proper rate for switching service is the rate per hundredweight and not a per car weight. I have not testified as to costs in my direct testimony. (Tr. 2547.)

Mr. Cardy: Well, outside of the fact that you think the same rate per hundred pounds should apply on all traffic, regardless of value, its loading or anything else, have you any other facts to suggest that might justify your position in applying exactly the same rates on low-grade commodities and high-grade commodities?

Mr. Davis: Well, just a moment; I object to that question. What we are trying to find out here is as to whether

or not the rates should be the same within the state of Illinois or Indiana, or both, as on interstate. That rate has been fixed by the Interstate Commerce Commission at 3 cents, 3½ cents and 4 cents for the various hauls, and the question is not proper cross examination in regard to any exhibit that Mr. Vivian has offered. (Tr. 2548.)

Examiner Faul: The witness may answer. (Tr. 2549.)

The Witness: I have not made any investigation into that. (Tr. 2549.) Referring to Exhibit 101, page 2, item 35 shows present revenue per car of $22.33 and proposed revenue of $33.65 in item 35. The present revenue is based on 40 cents per ton and the proposed rate is 60 cents, and as to present [fol. 1201] or proposed car revenue shown in Exhibit 101, more clearly reflecting the actual increase that will obtain on stone, sand and gravel if the proposed rates go into effect, I think columns 5 and 6 reflect, or rather, the difference between those two columns reflects the increase on any one commodity as it is reflected in the exhibit. As to items 14 and 15, page 2, Exhibit 99, showing present and proposed revenues on stone, sand, gravel and clay, being corrected as shown on page 2 of Exhibit 101, I will say these are two different statements.

Mr. Davis: Let me explain, Mr. Cardy. (Tr. 2550.)

Mr. Cardy: Will you agree, Mr. Davis, that the present and proposed revenues shown on page 2 of Exhibit 110 reflect the actual situation in so far as stone, sand and gravel are concerned?

Mr. Davis: Yes.

Mr. Cardy: All right. (Tr. 2551.)

The Witness (continuing): As to the theory that there is an unjust discrimination between the revenues as reflected on Exhibit 101 on stone, as compared with the proposed revenues or the present revenues on other commodities in interstate traffic, our proposal deals with all commodities as a whole. I have not entered into any analysis by individual commodities. I have set these things up here in order to present a complete story by commodities. (Tr. 2551-2552.) I have said before that Exhibits 99 and 101 have no relationship as to each other. One is based on September, 1926, and represents the original traffic test, and the other is the new traffic test. (Tr. 2553.) As to any

facts outside of the mere statement that all traffic moving in the district should take the same rate, or as to any other facts to justify as great a spread as indicated in the carload revenues on different commodities in the district, I [fol. 1202] would say the exhibits speak for themselves, that I have introduced. (Tr. 2556.)

Examiner Faul: Mr. Davis, in order that the record may be clear, will you make a definite statement now as to what the proposal of the carriers is in connection with the intrastate rates?

Mr. Davis: All right, if your Honor please. (Tr. 2558.) I will make a statement for the carriers, and I will ask Mr. Connell to make a statement for the Chicago Junction. The proposal of the carriers here is to apply on state business, both Indiana and Illinois, the same as the Interstate Commerce Commission has authorized on interstate business moving within the district, and those rates are 3, 3½ and 4 cents on one-, two- or three- or more line movements, respectively, and to apply to all commodities, including commodities that move below or above the Lowrey basis; but there were one or two items excepted, such as railroad equipment on its own wheels.

Examiner Faul: That is understood.

Mr. Davis: Mr. Connell will again make the statement which he made in the original hearing in regard to the proposal of the Chicago Junction. (Tr. 2559.)

Mr. Connell: I think I stated at the original hearing that the only exception the Chicago Junction proposed was on what we call an intradistrict movement, on which a charge, I believe, of $3.15 applies when the shipper furnishes the car, and $7.15 when the carrier furnishes the car, but as to movements between the two districts the Lowrey basis will apply, and that would be 3, 3½ and 4 cents. (Tr. 2560.) The only exception we are proposing from the 3, 3½ and 4-cent basis is what we call intradistrict movement. There will be an exception there from the Lowrey basis, and by [fol. 1203] intradistrict I mean, as explained at the original hearing, that the territory served by the Chicago Junction Railway was divided into 4 districts, and that a movement within any one district takes a lower rate than a movement between any two districts. I am talking about that part of the Chicago district that is served by the Chicago Junction

Railway which has within its confines the Union Stockyards district. (Tr. 2561.)

Mr. Connell: We have got what we call a zoning system in the Central Manufacturing District, as far as the Chicago Junction Railway is concerned. (Tr. 2562.) But there is no zoning system that prevails throughout the entire Chicago district (Tr. 2562), and I did not understand that anybody was advocating zoning in the Chicago district. (Tr. 2563.)

Mr. Brown: Oh, well, we are going to come to that probably.

The Witness (continuing): As to Exhibit 99, page 2, the last column there should be changed to 60 cents all the way through, excluding the Chicago Junction Railway, unless there happens to be some one-line closed teamtrack movement. (Tr. 2564.) Taking item 35, clay, gravel, sand, stone, showing proposed rate of 51 cents, and present revenue is shown at rate of 33 cents (Tr. 2564), our proposal is to ask for 60 cents per ton on that commodity on a single-line haul, and on all other commodities. We are not going to keep you down lower than the rest, or higher either, and that is the rate we are now charging on interstate shipments of sand and gravel. (Tr. 2565.)

[fol. 1204] The third item on page 1 of Exhibit 110 shows shipments of stone, sand or gravel that has been shifted from interstate to state traffic in the district, a movement from the Marblehead Lime Company; and I do not know whether it is one of the shipments that originated on the Pennsylvania that might have moved either Indiana Harbor Belt or via the Pennsylvania. It actually did move Pennsylvania and Baltimore & Ohio Chicago Terminal. (Tr. 2566.) The shipment was crushed stone. I do not know whether or not there is a stone-producing plant there or whether it was a special stone or not. I know it was billed as crushed stone, but do not know whether the Buda Company uses crushed stone. I did not investigate the circumstances requiring the movement. (Tr. 2567.) Whether or not it might have moved from an interstate point originally in Indiana over to Illinois, I know the car actually moved via an intrastate route rather than an interstate route. That movement would not necessarily be typical or one reflecting the entire situation in the district (Tr. 2567-2568); and I would ask the Commission to base a 13th Sec-

tion order against stone upon that one movement, if the same conditions were found to exist all over the district. I have not checked up all of the crushed stone movements. Other than the exhibits which I have submitted here, I have no other facts that might be helpful in determining whether or not the present state rates had any effect upon interstate traffic. (Tr. 2568.)

Cross-examination.

By Mr. Brown:

On sheet 2 of Exhibit 101, first item, referring to 67 cars of wheat at the present rate of $3.60, I cannot recall or state what that movement was. I can get it and will let you [fol. 1205] have the information later, but it will take a lot of digging to get it. (Tr. 2569.)

On sheet 5 of the same exhibit there are three items of wheat, the last one consisting of 62 cars, with a charge of $3.15 per car, and I will give you a memorandum of that one. (Tr. 2569.)

On page 16 of Exhibit 103, showing car of flour and meal, the basis is 3¾ cents per hundred pounds, with proposed rate of 6 cents per hundred pounds, and I imagine applies to a team track delivery, and it should be thrown out of the exhibit. I presume, without investigating it, that item on page 26 covering a car under the grouping "Sugar, Syrup, Glucose and Molasses," is also in the same situation, where it shows a rate of 7 cents per hundred pounds, with a proposed rate of 9 cents per hundred. (Tr. 2570.) I can find out whether, under the heading group 4 designated "Other Grain," grain screenings are included. (Tr. 2571.) But grain screenings come under class 6 of the classification which we have used, the old classification, which was "Other Mill Products." (Tr. 2571.) Charts B, F and J in Exhibit 110, showing movements from the malting plant of Schwill & Company, were all barley screenings. (Tr. 2571.) As to other illustrations in the exhibit, showing movements from Schwill & Company for their account or the account of others, but not shown on charts, I could not say they were barley screenings because I have not checked it up. (Tr. 2571.)

In answering Mr. Cardy that I thought that on all commodities switching rates should be on a per-hundred-

pound basis, I have not qualified as a rate man, and as to considering or disregarding competition, I am not qualified to speak as a rate man. (Tr. 2571-2572.)

[fol. 1206] Mr. Brown: If the Examiner please, there is one point I would like to clear up, following the statement made by Mr. Davis that team tracks that are open will take the Lowrey basis proposed, 3, 3½ and 4. I would like to know if team tracks that were open in 1928 will remain open or be reopened, if they have been closed since then.

Mr. Davis: Well, I do not know whether or not there were any that were open in 1928 that have since been closed; but it is our desire and intention that where a railroad desires to have, and has, its team tracks closed, they remain closed as far as this basis of rates is concerned; and those who do not desire that, or desire to open their team tracks, may do so. That is a matter of regulating their own property and delivering commodities coming to their own customers where they have team tracks. (Tr. 2572.)

Mr. Walter: Well, is there any difference, Mr. Davis, as between team tracks on intrastate traffic, and interstate traffic? In other words, some are open on intrastate and not open on interstate, or vice versa, within the district.

The Witness: I could not say, Mr. Walter. The tariffs will have to speak for themselves in that respect. As to justification in asking the Interstate Commerce Commission to increase the state rate on coal where there is today no movement I say I have not made any investigation by commodities. (Tr. 2577-2578.)

Examiner Faul: As I said before, in any Section 13 case, I think there is no doubt but what the reasonableness of the intrastate rate is in issue. (Tr. 2579.)

Cross-examination.

By Mr. Ames (Tr. 2579):

The only purpose of the exhibits is to compare the reve-
[fol. 1207] nue under the interstate rates with the revenue under the state rates and to cover the matter of diversion of traffic from interstate to intrastate rates. In making the exhibits we started with the individual car and carried the accumulation of data through to the exhibits that I have introduced, and have compared the revenue under in-

trastate rates with the revenue under interstate rates of 3, 3½ and 4 cents. (Tr. 2580-2581.)

Mr. Walter: I want to make the request, if the Examiners please, that Mr. Vivian furnish us with an exhibit on all fours with Exhibit 110, which will show every car or all cars moving in the same period, December 10, 1931, to March 31, 1932, between the industries shown on the exhibit, separated by routes. Exhibit 110 shows only the routes via the Pennsylvania, with three exceptions. I want an exhibit that will give us all of the cars handled by the respondents between the same industries, via any route, separated by routes, during the same period. All I want is an exhibit just like the first page of 110, that will show every car that moved from consignor 1 to consignee 2 by any route during this period. (Tr. 2581.) That is, whether handled by the Indiana Harbor Belt and some connection, or that moved via the Indiana Harbor Belt between those industries, or by any other route than that shown on the exhibit. (Tr. 2582.)

Mr. Davis: My understanding of Mr. Vivian's statement was that he threw out some because they were not routed by the shipper or that were a duplication, and if I am wrong about that, I want Mr. Vivian to correct me. (Tr. 2590.) What are the facts in that regard, Mr. Vivian?

The Witness: Our instructions were to the effect that we wanted only cars routed by the shippers, specifically, as [fol. 1208] to routing that they desired the car to move, or where they indicated on their bills of lading to protect the intrastate rate; and that is my understanding of what the agents have furnished us, and we have thrown out a large number of sheets, duplications and otherwise, from our study. (Tr. 2590.)

Examiner Faul: Mr. Walter, it seems to me that the carriers will have to stand or fall on their record. Now if you have evidence, for example, of some inaccuracies in Exhibit 110, possibly the carriers will be glad to change the exhibit.

Mr. Walter: Well, if they will take the exhibit out of the record and withdraw it and all of the testimony in connection with it, all right. If not, I want them to give me the date and the bills of lading covering every car moving from

or to the industries on that so-called Calumet River Branch and points within Illinois, and I want the routes both state and interstate. I do not want it limited.

Examiner Faul: Mr. Davis, do you desire to supplement what you have here in any manner, shape or form? (Tr. 2595.)

Mr. Davis: I may later on—that is, I will not withdraw the exhibit because I think it is very germane to this case, but I would like to confer with the carriers in regard to this traffic that has been referred to, to see how much trouble it would be to get that. I also want to go over the working sheets from which this exhibit was compiled, to see whether or not the information we asked for was what was given, and I am not in a position to answer those questions right now. We do not think counsel ought to ask for all of the shipments that moved in one month from those industries to certain other industries. I do not think the Commission ought to require that, because it might disclose business relations that would not be proper under the Act—although [fol. 1209] I feel that the Commission would have the power, in an investigation, to order that data to be submitted to the Commission. (Tr. 2596.)

Examiner Faul: Mr. Davis, will you be able to state definitely by tomorrow morning what the carriers propose to do in connection with Exhibit 110, so that we may proceed?

Mr. Davis: I will try to, if your Honor please. It depends upon how much of my time is taken up here.

Examiner Faul: Will that be satisfactory, Mr. Walter?

Mr. Walter: Surely; there is not going to be any opportunity to charge delay to me in this case, so I will make no point—tomorrow is all right, or some time today would be all right. (Tr. 2597.)

Examination by Examiner Faul:

Referring to my Exhibit 110, in stating yesterday there were different routes available, in addition to those shown by these illustrations, I did not have in mind any industries in the switching district between which there was available only an interstate route. We had some other diagrams which we drew up but did not reproduce, which show similar situations to these 14 we have presented in this exhibit, as to both the natural and unnatural routes, one relating to

an interstate movement and the other to an intrastate movement; but they are somewhat similar in character to those that are shown here, and therefore we eliminated them. (Tr. 2597-2598.) I think there were movements that involved strictly interstate traffic, where the shipper could not elect between an interstate and an intrastate movement. I cannot specify the points or the industries, other than the fact that I understand there are some Indiana Harbor Belt movements that must necessarily be made interstate on account of the industries being located on the different sides [fol. 1210] of the state line. (Tr. 2598.) Offhand I do not have in mind the commodities, or whether those shippers compete with shippers in intrastate commerce. I do not even remember the names of the industries. However, I know that there is something of that type.

Referring to Mr. Walter's question regarding inclusion of switching district cars in my exhibits, I find the Interstate Commerce Commission's instructions are silent in regard to including that type of traffic, but on investigation with our freight auditor I find that the exhibits do not include switching district cars. (Tr. 2598.) That is, in connection with Exhibit 108.

Cross-examination.

By Mr. Tholin:

My Exhibit 99 is a restatement of Exhibit 11-A in all respects, including the item of proposed revenue, and Exhibits 101 and 103 include rates and traffic corresponding to those included in Exhibits 11-A and 99, omitting the Chicago Junction Railway from Exhibits 101 and 103, but which is included in Exhibit 99 (Tr. 2599); and the proposed revenue shown in Exhibits 101 and 103 is on the basis now proposed, including the change in the rates of the Elgin, Joliet & Eastern. We have included business moving to closed team tracks in there, that should be taken out; that is true of Exhibits 99, 101 and 103; in order to show the straight rates of 60, 70 and 80 cents per ton for one-, two- and three-line hauls. The reduced rates on the Elgin, Joliet & Eastern are given effect in the proposed rates shown in Exhibits 101 and 103. (Tr. 2600.)

Mr. Walter: If the Examiner please, the first day of the hearing we discussed the question of the use of the record

in each of these cases, as far as it is germane to the issue in [fol. 1211] the other; and Mr. Davis desired an opportunity of consulting with his associates as to whether he would agree that we might make such use of the record, namely, that in 19610 the testimony would be available for use in the formal complaint case, No. 24950, and on the other hand that the testimony in the formal complaint case, No. 24950, would be a part of the record in 19610, so far as it is material to the issues in each of the respective cases; and that we would keep the cases separate, but so far as the record in either was competent, it would be used in the other, subject to Mr. Davis's right to object as to any particular testimony that was not either germane or competent. (Tr. 2601.)

Mr. Davis: And that the issues in 19610 would not be enlarged by my agreeing to such use of one record in the other case.

Mr. Walter: That is right, the issues of each case to remain as though there had not been the other case.

Mr. Davis: Yes. Now, there is one more reservation which perhaps is not necesary, but I will make it anyway, and that is, if your formal complaint No. 24950 should be delayed, or there should be some postponement of it, or some evidence to be offered in it that would cause a delay in hearing it, that delay shall not cause a delay in getting 19610 at issue and decided. I do not think you will have any objection to that.

Mr. Walter: Well, I have just this objection: Of course, the Commission will be in complete control of whether it will decide the two cases at the same time, or not. I do not want to say that I may not ask for a postponement to take testimony in my case; but if the testimony is not available when the Commission comes to decide the case, it could not use it, of course. My point is that when the testimony is taken it shall be available for use in either case, but if it [fol. 1212] is not taken, why then, of course, it cannot be used.

Examiner Faul: And you would not make a point of thaf feature?

Mr. Walter: No, I am going to try to get through with the case at this session; I want the two cases to go along together.

Examiner Faul: Is that agreeable to all parties of record? (Tr. 2602.)

Mr. Ames: It is agreeable to me.

Mr. Hufsmith: That is agreeable.

Mr. Shafer: It is agreeable.

Mr. Ames: I assume that this 19610 case will be formally closed on the record before you start taking testimony in the complaint case, Docket No. 24950.

Examiner Faul: Yes, that is the intention.

Mr. Walter: I may say that when I come to offer my testimony in 19610, I shall not duplicate it when I come to deal with the formal complaint. In other words, I am serving notice now that the testimony already taken I regard as material in some respects to our formal complaint case, and I shall not duplicate that.

Examiner Faul: The 19610 case will be formally closed before we commence with the complaint case, Docket No. 24950. (Tr. 2605.)

Mr. Shaffer: I want to make a motion that the following statement appearing on carrier's Exhibits 99 to 104, both inclusive, presented by the Witness, Vivian, be stricken from the record: "Revenue discrimination cuased by refusal of state commissions to permit present interstate rates to become effective on interstate traffic," because the statement is a mere conclusion based on various assumptions and is not supported by any facts presented.

[fol. 1213] Likewise, I want to move that the following statement appearing on Exhibits 105 and 106, be stricken out: "Showing blockading of interstate traffic due to refusal of state Commission to permit present interstate rates to become effective on intrastate traffic." (Tr. 2606.)

Examiner Faul: The record will show the motion and it will be taken under consideration. (Tr. 2607.)

Mr. Hufsmith: On behalf of the Public Service Commission of Indiana, we wish to join in the motion just made by Mr. Shaffer. (Tr. 2609.)

Examiner Faul: The motion will be taken under consideration and a ruling made before the conclusion of these hearings. (Tr. 2611.)

FRANK N. VANDERHOOF was sworn and testified as follows:

Direct examination.

By Mr. Ames:

Am the same Vanderhoof who testified in the earlier proceeding. I am still employed by the Graselli Chemical Co., at its plant at Graselli, Indiana, and have the same duties that I had when I previously testified. That plant is within the Chicago Switching District. At the time of the prior hearing, the switching operations entailed in spotting cars at our plant, were performed by the Indiana Harbor Belt Railroad and there has been no change in those operations as to the means of handling since my previous testimony. (Tr. 2613.)

J. W. BROWN was duly sworn and testified as follows:

Direct examination.

By Mr. Ames:

Am assistant traffic manager of Graselli Chemical Co., [fol. 1214] Cleveland, Ohio. Testified previously in this case, at which time I stated my traffic qualifications. I am familiar with the issues involved in this case. I have prepared or had prepared under my supervision some exhibits for introduction in this case and am prepared to vouch for the accuracy of such exhibits.

Our plant in the Chicago Switching District is located at Graselli, Indiana, about one mile Southeast. (Tr. 2614) of the center of the Indiana portion of the switching district. The plant is served by the Indiana Harbor Belt; Baltimore & Ohio Chicago Terminal; Elgin, Joliet & Eastern; Wabash, and the Pennsylvania Railroads. The switching in the Graselli plant is performed by the Indiana Harbor Belt for account of the other lines reaching the plant under an agreement between them. Exhibit 112 shows the track layout at the plant. It shows our railroad tracks inside the limits of our Graselli, Indiana, plant which consists of 12 miles of tracks laid with 80 and 90 pound rails which as of April 1, 1932, had an appraised value of

$117,533.53. In addition, we maintain and operate one track scale. (Tr. 2615.) The blue print covers our plant and its boundaries are from the Calumet River on the lower portion of the sheet to all of the remaining portion of the sheet. (Tr. 2615.) The roadways shown on the blue print in some cases cover actual roads and in others it is vacant land kept clear to allow access to all buildings but these are not designed to indicate railroad tracks. At our Graselli plant we manufacture sulphuric acid and other chemicals. Sulphuric acid is manufactured principally from sulphur. During 1930, we shipped a total of 83,862,080 pounds of sulphuric acid to points in the Indiana portion of the Chicago Switching District from our Graselli, Indiana plant. (Tr. 2616.) These shipments were wholly intrastate, moving over normal routes and [fol. 1215] were not diverted from interstate routes as illustrated by Witness Vivian. (Tr. 2616.) The present sulphuric acid rate in tank cars applying from Graselli, Indiana to points in the Indiana portion of the Chicago Switching District, is 2¢ per 100 pounds and has been in effect since October 5, 1921, except that the rates from Graselli to Hammond and Roby, Indiana were $6.50 per car of 60,000 pounds plus 14¢ per net ton on weight in excess of 60,000 pounds, which were reduced on July 1, 1922 to $5.85 for 60,000 pounds plus 12½¢ per net ton on weight in excess thereof. These per car rates were cancelled and placed on basis of 2¢ per 100 pounds effective August 4, 1923. Have prepared Exhibit 113 showing number of shipments, average weight, etc., of sulphuric acid, moving in tank cars from our Graselli, Indiana plant to points in Indiana in the Chicago Switching District. (Tr. 2617-2618.) Showing total net weight, average weight per car, rate per hundred pounds, average revenue per car as well as average revenue per car based on the carriers' proposed rate of 3¢ per hundred pounds. (Tr. 2618.) If the proposed increases are applied to this movement of acid in tank cars, the competition is so keen that such increases cannot be passed to the customers and we will necessarily have to absorb the increase and turn to other forms of transportation. These are all single line hauls in Exhibit 113. My Exhibit 114 is a statement of the destinations in the Chicago Switching District, to which we ship sulphuric acid in tank cars from our Graselli, Indiana

plant. Our intrastate business to Indiana points in the district, is by far greater importance than our interstate business in the district. (Tr. 2618-2619.) My Exhibit 115 is statement showing connections of the Indiana Harbor Belt with various railroads in the Chicago Switching District which are reached from our Graselli, Indiana plant. It shows the mileage from Graselli, [fol. 1216] via the Indiana Harbor Belt to Indiana Harbor Belt Junction with such connecting lines. My Exhibit 116 is a record of cost of operation of the American Tank line, owned and operated by the Graselli Chemical Co., for the year 1930. All our tank car shipments in the Chicago Switching District are made in our own cars which we maintain and keep under repair. For hauls to the Indiana portion of the district, we receive no allowance whatever. (Tr. 2619.) To certain points in the Chicago Switching District in Illinois, we receive an allowance of 1½¢ per mile for 25 miles both loaded and empty and on all line haul movements outside the district, we receive the same allowance; (Tr. 2620) which line haul movements are not under consideration in this case. We receive no allowance whatever on any of our single line shipments. We receive no allowance on intrastate movements. (Tr. 2620.) But we do receive an allowance on some interstate movements in the district. As to the distinction or the difference, the carriers individually publish the tariff that shows what the mileage allowance will be and on 2 line shipments from points in Indiana, for example, the allowance from Graselli to Argo, Illinois, on the Indiana Harbor Belt is made on the basis of 25 miles, at 1½¢ per mile, making a total of 75¢ for the car for the round trip. The rate in Indiana is 2¢, the interstate rate, 3¢, 3½¢ and 4¢ and the former interstate rate was 2½¢. For both single hauls and joint line hauls, our interstate rate has been increased to the full basis authorized by the decision of the Commission. (Tr. 2621.) Where we pay 2¢ per 100, we receive no allowance from the carriers. Prior to the increase, there was an interstate rate of 2¢ for a single line haul and we received no allowance on a movement under that 2¢ rate. My Exhibit 117, is a statement showing the regularity of movement of tank car loads of acid from Graselli, Indiana [fol. 1217] to points in the Chicago Switching District in Indiana with number of car days required on shipments to

such points showing an average car detention of 5.7 days. (Tr. 2622.) That is, 5.7 days consumed from the time the car left our plant until it was returned empty. (Tr. 2623.) And that covers the Indiana intrastate movements, moving on the rate of 2¢ per hundred pounds. Multiplying the average number of days detention by the cost per day would give a cost, but not really the cost to us of maintaining our equipment because we cannot run our cars to 100 per cent efficiency. We cannot have a load waiting for each car every time it comes back to the plant and we normally figure on these short hauls. If we can run the cars to 50 per cent efficiency, we will be doing very well, so if you multiply that by our cost and then double it you will arrive at the cost to us. Multiplying 5.7 days by $1.19 per day would be our minimum cost based on maximum efficiency. (Tr. 2623.) The minimum haul covered by Exhibit 117, would be about 200 feet and the maximum haul approximately 8 miles. The actual average haul is about 4 miles. Exhibit 118 is a statement of prices on sulphuric acid in tank cars in the Chicago District from 1920 to 1932 inclusive. The price shown for 1932 is the lowest I could obtain in time to have it printed in this exhibit and that price prevailed about April 25. (Tr. 2624.) Competition in the sulphuric acid business in the Chicago Switching District is very severe. We meet it from zinc smelters producing sulphuric acid as a by product in the roasting of zinc, which plants are located at Danville, Depue, Peru, La Salle, and Hillsboro, Illinois and Cuba City, Wisconsin. All these plants produce sulphuric acid as a by product in the roasting of zinc ore. We produce it entirely from sulphur, which is a direct production, with no by product involved. A price difference of 5¢ per net ton is sufficient to gain or lose a contract. If our intrastate rates to points in the Indiana [fol. 1218] portion of the Chicago District are increased as proposed by the carriers, it would be necessary for us to absorb this increase because, as we understand, no increase is contemplated in the rates from points without the district, that is, from the by product acid producing points referred to, all of which will have a rate of 9¢ per hundred to all points in the Chicago Switching District, except from Hillsboro and Cuba City, the rate is 10¢ per hundred. (Tr. 2626.) The freight that our traffic in the Indiana portion of the district will bear is distinctly limited

and our present rates are on a materially higher level, relatively than the line haul rates both to and from the Chicago Switching District. The controlling competition we have to meet in selling acid in the Chicago district is the production from the by product acid producing plants at Danville, La Salle, etc. We are not making complaint of the maintenance of lower intrastate rates than interstate rates in the state of Illinois. (Tr. 2626.) Prior to the establishment of the 2¢ intrastate switching rate in Indiana the question of the outside competition was a very important consideration as well as the extremely short hauls, the heavy loading and the fact that we furnished our cars to the carriers for nothing. (Tr. 2627.) As a result of this proce-ding, have made a study in connection with the possibility of trucking our commodity from our plant to consuming points in the Indiana portion of the switching district. (Tr. 2627.) The following is an estimate based upon our actual experience in trucking in other districts, of the cost of trucking sulphuric acid in bulk from Graselli, Indiana, to various destinations in the Indiana portion of the Chicago district; from Graselli, Indiana to Indiana Harbor, East Chicago, Hammond, etc., investment in one tractor with semi-trailor, $12,000.00. Operating cost based on 7 trips per day, 17 tons per trip, operating 20 days per [fol. 1219] month, 10 miles per trip, 70 miles per day, carrying total of 2,380 tons per month is as follows:

Labor, 60¢ per hour, 20 hours per day, 20 days per month, $240.00.

Gas, 15¢ per gallon, 4 miles per gallon, 1400 miles per month, $52.50.

Oil, 4 gallons, 500 miles at 40¢ per gallon, $4.48.

Tires, 5¢ per mile, 1400 miles, $70.00.

Repairs, 3¢ per mile, 1400 miles, $42,00.

Insurance, $240 per year, $20.00.

License, $240.00 per year, $20.00.

Depreciation, at 20 per cent, $200.00.

Return on investment, 10 per cent, $100.00.

Total monthly expense, $748.98 or 31.5¢ per net ton. (Tr. 2628.)

Our engineering department has completed a survey of a pipe line from our Graselli Indiana plant to the plant of the Empire Oil and Refining Co., East Chicago and has a

right of way for such line which will consist of 6,000 feet of 2½ inch pipe, the annual cost of operation being estimated as follows:

Capital outlay, $5,790.00 at 6%, $347.40.
Depreciation at 5 per cent, $289.50.
Repairs, $140.00.
Power, 12 H. P. for 2.4 hours per day, 365 days at 1¢ per kilowatt hour, $104.50.
Annual charge for rights of way, $25.00.
Labor, $547.50.
Total annual expense, $1,453.90. (Tr. 2629.)

Our estimated cost of transporting this acid by pipe line is approximately 4¢ per net ton under the present rail rate of 40¢ per net ton. If the rail rate is advanced to 60¢ per [fol. 1220] net ton, the cost to pipe this acid will be 24¢ per net ton under the rail rate. Although we pipe acid from some of our other plants, we have not yet constructed the proposed line principally for two reasons; first, while there is a profitable difference between rail and pipe line cost, it it not at present very great and; second, we are not desirous of unnecessarily diverting traffic from the rail lines. However, we state definitely that we will have this pipe line laid and operating within 2 weeks after the rail rate is advanced, if such an advance is ever made and once such a line is laid, it is unlikely that any subsequent reduction in the rail rate will bring this traffic back to the rail carriers. (Tr. 2630.)

We are piping and trucking acid at several other plants and these studies were made by engineers in the employ of the company based on actual experience. Our management has already approved the capital layout necessary to pipe this acid and we have every expectation of trucking it to other points in the Indiana portion of the Chicago Switching District, if the proposed increase in rates is allowed to become effective. (Tr. 2630.) If the present rates are continued, we expect to continue using the rail lines. The present rate we pay has resulted from negotiations and conferences between us and the carriers and we are satisfied to continue to pay the present rate of 2¢ per hundred, but are not satisfied to pay 3¢ and will not do so. Exhibits 112 to 118, both inclusive, were offered and received in evidence, marked "Exhibits No. 112 to 118, both inclusive, Witness Brown". (Tr. 2631.)

Examination by Examiner Faul:

Our intrastate rates under ex parte 103, were increased 10 per cent. (Tr. 2631.) We regarded the increase as a temporary one. We made our pipe line study on a 20 year [fol. 1221] basis and our truck study on a 5 year basis. The ex parte 103 increase has an expiration date and we felt that might expire even prior to the date set and therefore, we have disregarded that increase insofar as affecting our routing of traffic or diverting it to other means of transportation. It would cost us 31½¢ per ton to move our traffic by truck and 36¢ to move it by pipe line, as against the present 40¢ rail rate. We are not trucking acid in tank trucks out of our Graselli plant at the present time to any point. Our business is set up for tank car shipments and we would have to change our entire way of doing business. (Tr. 2632.) We have done that in the East, but so long as we can live with this thing, we would prefer not to do it, but if the rate is increased 50 per cent, there is no question but what our people will no longer sacrifice this saving. So far as the 4¢ per ton on pipe line is concerned, the management did not like to lay the line and go ahead with the proposition on a basis of a 4¢ per ton saving. At the present time, if the return on investment was greater, they would have done it. In fact, our engineering department is hoping that you will increase the rate so that they will have some work to do. Our average haul for interstate movements would be in excess of the mileage from Graselli, Indiana to Junctions with the Indiana Harbor Belt or the junctions with its connections as shown on Exhibit 115; that makes no allowance whatever for hauls beyond that. We have very little, if any, single line interstate movements and we must compare the single line intrastate movements with 2 line interstate. (Tr. 2633.) All of our interstate movements show minimum of 25 miles for the Indiana Harbor Belt and we are unable to say how many miles beyond on their connection. We have competition in the district both interstate and intrastate with 3 other sulphuric acid manufac- [fol. 1222] turers in the district; one at South Chicago, Illinois, one at Calumet, Illinois and the third at Hammond, Indiana. We have lost no contracts because of lower intrastate rates. The shippers at South Chicago or Calumet City, Illinois, shipping into Indiana would not necessarily compete with our intrastate rate. (Tr. 2634.) Prices of

acid generally are made by what the by product man is willing to sell for. The Chicago market is depressed due to the by product competition. (Tr. 2634.) They make so much acid and they are going to sell it and whatever market they happen to pick out in Chicago is sufficient to make the market throughout the whole territory. Our prices in other districts where we do not have by product competition are much higher. I could not say whether the industries at South Chicago and Calumet City ship into Indiana. The presumption is, however, that they do, and if so, they would have to pay the higher interstate rate as against our 2¢ intrastate rate. They are in the same relative position we are when we ship to Illinois. There is no by product producer in any part of the Chicago Switching District. All producers here make acid out of sulphur (Tr. 2635) and I do not think any of them are much better off than we are. We figure we are giving the carriers our cars for nothing in the switching service. The mileage allowance compensates us in a very small degree for the expense and it is so small that it would be a very small fraction if you tried to figure it out as a reduction from the 3½¢ rate. It would figure out about 75¢ per car. (Tr. 2636.) The time required in getting cars back to our plant would be greater than it would on intrastate shipments. (Tr. 2636.) There are no producers of by product sulphuric acid in the Chicago Switching District. Those producers are at Depue, La Salle, Peoria, Danville, and Hillsboro, Illinois and one at Cuba City, Wisconsin. The acid manufacturers in the [fol. 1223] Chicago Switching District make acid direct from sulphur, having no by product or coke product. They get acid with no residue. The by product producers ship into the Chicago District, not on the switching rates, but on line haul rates. (Tr. 2637.)

Cross-examination.

By Mr. Davis:

The by product manufacturers at La Salle have roasted zinc there for years in the manufacture of zinc spelter and obtain the acid as a by product. La Salle is probably about 100 miles from Chicago and their rate is 9¢ into the Chicago district. Our rate for distances over 25 miles to points in the Chicago district is 3½¢ for 2 mile hauls. We ship

into Calumet City but not from Graselli, Indiana to Calumet City, but from Seneca, Illinois. (Tr. 2638-2639.) Exhibit 114 shows movement from Graselli to Calumet City as we did ship to Calumet City at one time; but now we ship to Calumet City from Seneca, Illinois, on a rate of 7¢. The movement from Seneca is governed entirely by the acid they have to move and it has moved from there to Calumet City both before and after the Chicago switching rates were changed. (Tr. 2639.) The rate from Graselli, Indiana, to Calumet City had nothing to do with the movement from Seneca to Calumet City. We did ship into South Chicago. I have shown that movement and think there were half a dozen cars to South Chicago. To South Chicago, we ship from Graselli, Indiana, and we have a competitor at South Chicago. We also ship to Hammond, Indiana, from our Graselli, Indiana plant. (Tr. 2640.) I could not offhand estimate the proportion of our entire output at the Graselli plant that is shipped to points within the district whether state or interstate, but my opinion is that more than 50 per cent of our production moves to points in the Indiana portion of the district. We ship from our Graselli plant to interstate points outside of the district and to state [fol. 1224] points outside the district and those rates are materially higher than our 2¢ rate within the Indiana part of the district or our 3½¢ rate interstate. I would say more than 50 per cent of our product is shipped to points inside of the district. It is a relatively small tonnage, and of that, more than 50 per cent is shipped to points in the Indiana side of the district; (Tr. 2641) the bulk of that is shipped to the Indiana side. In Exhibit 117, showing 5.7 car detention days coupled with Exhibit 116, if we multiply that number of days by $1.19, the average cost per car you almost have to double that to get the correct amount that we are out. According to Exhibit 113, we pay the carriers car revenue of $24.59 at the present time and detention based upon the figures we have given would be about $13.50, the way I figure it, or more than one half the revenue. In making the 2¢ rate, consideration was given to the fact that we furnished our own cars. That was one of the factors considered. (Tr. 2642.) It is not to avoid capital expenditure that we have not laid the pipe line or on account of the depression; the reason is we cannot save any appreciable amount of money at the present time on the decreased rate.

The money has been appropriated and if the rate is advanced showing us sufficient return on our capital, we will proceed with it. The capital outlay for the pipe line including everything would be $5,790.00. By truck, insofar as changes in plant are concerned, there might be a few feet of line or something of that sort and something additional for the strengthening of the roads, but due to the fact that we are about to conclude a contract within the next couple of days to haul our stuff coming in by water from the East Chicago Dock Co., to our Graselli, Indiana plant, about 3½ miles, which is about our average haul in the district, at a trucking rate of less than 25¢ per ton, probably the invest- [fol. 1225] ment for strengthening roads should not properly be charged against the sulphuric acid, because it would be made to take care of this other inbound traffic. (Tr. 2643-2644.) In Exhibit 116, the item "Car repairs by railroads" $19,178.00 is the amount we paid to the railroads for repairing our cars. We did not send them to the railroad shops. They are for running repairs; for example, if a car was out on your road and something happened to it that necessitated repair to put it in condition to move, you would go ahead and repair it and bill us and that is the total amount of those bills. (Tr. 2644.) The difference between the cost of trucking, 31.5¢ and the 40¢ rail rate has not induced us to use the trucks. We are rather reluctant at all times to truck. As a general rule, it is not as nice a way of doing business. (Tr. 2644.) Our whole business, our plant and everything else is laid out on a rail basis. Sales are made on the carload unit and on the basis of the proposed saving we have not deemed it sufficient to make that investment. (Tr. 2645.) At the present 40¢ per ton rate, the 31.5¢ trucking cost would create a saving of 8.5¢ per net ton and I did not say that to increase that rate from 2¢ to 3¢ would put us out of business. We expect to be in business for a long time, but it would have the effect of diverting traffic from the rail lines because it would be an increase from 40¢ to 60¢ per net ton and the saving by truck would be 28¢ per net ton instead of 8½¢. (Tr. 2645.)

Cross-examination.

By Mr. Barse:

In Exhibit 117 the number of days in the third column represents the aggregate days required to handle the num-

ber of cars indicated in the second column; it is the total. The lowest number of days shown in the third column for [fol. 1226] handling any one car is 4, which undoubtedly involves some of the minimum hauls of 200 feet. (Tr. 2646.) I did not say that on the basis of that exhibit any 200-foot movement would require at least 4 days to handle the car, but carriers are taking that long to move the car. The exhibit shows no period less than 4 days in use. (Tr. 2646.)

Redirect examination.

By Mr. Ames:

We are not asking the carriers to repay the $13.56 per car maintenance if the 2-cent rate is continued. Payment for maintenance is not made to us any place in the country. (Tr. 2647.) We are not controlled by the Illinois acid plants, either in our price or in our ability to sell in the Chicago switching district. The arrangement to pay 25 cents per ton for movement by truck from the East Chicago Dock Company was not a movement of sulphuric acid. It consists of phosphate rock and will be extended to coal, salt and other commodities. (Tr. 2647.) I would prefer not to state the exact rate excepting to say that it is less than 25 cents per net ton. Our 31½ cent cost per ton estimated is all right. As a general rule we succeed in holding it under our estimate. The movement from East Chicago to our plant is a new one, and part of it formerly moved by rail. It is taking the place of a rail movement. We do not have any situations where we dispose of acid irrespective of the freight rate in the Chicago district. (Tr. 2648.) A fair summary of our position is that we will not pay the railroads an increase of 20 cents per ton on this commodity.

Re-examination by Examiner Faul:

We meet with keen competition in the district from by-product acid originating at the smelters in Illinois and Wis-[fol. 1227] consin, which are outside the district, and their product moves to the district on line-haul rates. We have a degree of competition with the producers who are within the district; but the controlling factor is the by-product competition; their costs are presumably lower. (Tr. 2649.) There are 4 plants within the Chicago switching district

that produce sulphuric acid, which includes our plant in Indiana, making 2 plants in Illinois and 2 in Indiana. The Indiana producers ship into Illinois. As to competing with Illinois producers within the state of Illinois, as between the various producers, as a general rule our business goes pretty much to the same customers; we have plant capacity provided for those customers, and so far as we can hear of it, our principal competition is from those outside fellows who produce by-product acid. (Tr. 2652.)

Examiner Wilbur: But they are in business competition with each other?

Mr. Ames: They are selling to the same man, and if you think that is competition, why then I will go along with your definition.

Examiner Wilbur: It is business competition. (Tr. 2653.)

Mr. Ames: Yes. (Tr. 2654.)

V. W. LANDON, duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Reside in Chicago, and am secretary of the Committee on Coordination of the Chicago terminals, and have been for 18 years. With reference to the portion of the Commission's decision in 177 I. C. C. 692, where it suggested that there was need of improvement in the handling of the vast switching business and the necessity for carriers to [fol. 1228] make proper study of the conditions for the purpose of eliminating unnecessary circuitous hauls, etc., the carriers have taken action as to that portion of the Commission's report. (Tr. 2656-2657.) We took from Exhibits 13 and 83 all cases of circuitous routes and referred them to the railroads interested in the movement. We took all industries that shippers stated were served by more than one railroad, that they thought could be switched by one of the terminal carriers, and referred those cases to the railroads involved, and asked for their criticism not only of the shippers' comment but of the carriers' comment as it

appeared in the exhibit. We have replies from all of the railroads but two. Under those replies there is nothing to indicate that there are any great savings to be brought about by adopting the methods that the shippers suggested. (Tr. 2657.) Proposals for changing or improving facilities for or manner of handling business within the Chicago switching district, coming from a railroad, is usually made through the General Managers' Association or directly to our committee, outlining the views on the proposition which is thought may save some money. Our committee investigates the proposition and usually sends out a questionnaire to all railroads to determine their present practice, and then makes a report either for or against. During the years I have been secretary we have handled a number of cases proposing changes. We have these shippers' exhibits analyzed now, that is, in full, and we are investigating methods, taking seal records, duplications, and things like that. In regard to this particular case we sent out a questionnaire and have gotten replies from all except 2 railroads (Tr. 2658), and until we get replies from these two railroads we are not exactly in a position to determine what conclusion should be reached. But the matter has received [fol. 1229] active consideration since the Commission report was put out. As a rule the matter is first taken up with the General Managers' Association. That association has various committees that work under its jurisdiction. This Coordination Committee is one of those, and handles transportation matters. There is a general committee known as the Coordination Committee, of which 27 railroads are members, and which includes all Chicago railroads except the industrial railroads, and each railroad has a representative on the committee. They are usually terminal superintendents. (Tr. 2659.) There are subcommittees of this general committee, and we have one Executive Committee, composed of 7 members, which handles all cases and assigns any subject to the subcommittees for study, but we have no standing subcommittees. The Executive Committee of 7 appoints subcommittees as the occasion arises. In this particular matter the Executive Committee appointed a committee of three, of which Mr. Shreeve is chairman, and the other members are Mr. Atwell, general manager of the Illinois Central, and Mr. Falk, superintendent of the Burlington. (Tr. 2660.) The answers to the questionnaires

sent out are addressed to me as secretary of the Coordination Committee, and when the reports are in, the subcommittee goes over them first and decides what kind of report to make, and it reports to the committee of 7, and if that committee agrees with the subcommittee's finding it passes it on to the General Managers' Association, which means all railroads will have a chance to vote on the recommendation. (Tr. 2661.) . The primary consideration in determining whether the present method or some other method should be used in handling traffic in the Chicago district, including traffic between carriers switching, etc., is economy. (Tr. 2661-2662.)

[fol.1230] Cross-examination.

By Mr. Walter:

Each railroad has a member on the Committee on Coordination. I am secretary of three committees. I report to the Committee on Coordination and to the committee of six and to the Committee of Engineers. I am secretary of the subcommittee consisting of Mr. Shreeve, Mr. Atwill and Mr. Falk. (Tr. 2662.) The matters suggested in the report of the Commission were brought to my attention in September, 1931, by J. W. Higgins, chairman of the General Managers' Association. It was then referred to the committee of seven, consisting of C. E. Taylor, of the Santa Fe, chairman (Tr. 2663); W. Atwill, general manager, Illinois Central; J. P. Falk, superintendent of the Burlington; L. C. Fritch, vice president, Rock Island; A. E. Jacoby, trainmaster, Pennsylvania; W. P. Lamb, assistant superintendent, New York Central. There are two members who have one vote, so there will be eight names; F. E. Morrow, engineer, Chicago & Western Indiana, and G. J. Shreeve, general superintendent, Belt Railway. Those two have one vote. Mr. Shreeve is on the committee of seven only in one connection. Mr. Evans, chairman of the Committee on Coordination, is ex officio a member of this committee and sits in at all meetings, and Mr. Shreeve is half a member. (Tr. 2664.) Mr. Evans is connected with the Indiana Harbor Belt and by virtue of his office as chairman of the Coordination Committee is a member of the committee of seven, and would by virtue of his office be a member of any committee that the Committee on Co-

ordination appointed. This matter was referred to the committee of seven on September 9th and it considered the matter at a meeting September 24, 1931. (Tr. 2665.) At that meeting the committee of seven appointed the subcommittee of three, consisting of Messrs. Shreeve, Atwell and Falk, which was notified of its duties on September 28th, [fol. 1231] and its first meeting was held October 5th, when it decided to give me the job of digging up what the criticisms were. Following October 5th I made copies of all allegations referred to in Exhibit 83; made tracings of the prints, those that were in your exhibits; and referred all those things to the committee. (Tr. 2666.) Then I took your exceptions on behalf of the Chicago Association of Commerce and individual industries and copied the portions referring to operating methods, and submitted all of that to the committee on October 24th. The committee then met on November 2d and at the time decided to send to the interested railroads those exhibits that they were interested in, and we got up the questionnaire that covered all of these questions in a more general way. I have two copies of that here. (Tr. 2667.)

Nothing has happened since the questionnaire was sent out except that we have received replies from all but two railroads. The two not replying are the Chicago, Burlington & Quincy and the Chicago, Indianapolis & Louisville. From these replies that have been received I reached the conclusion that no material economy would result to the carriers from adopting the suggestions that were made in the exhibits which we circulated. (Tr. 2668.) As to quicker service, the railroads explained that cars generally were moving in routes that were the most economical, even though they might be longer than other routes. In some cases we found that shippers' routing prevented cars moving via the short route, but during the course of that investigation some of that was changed. There were minor changes here and there. So far as any good is concerned in the matter or economy or in the betterment of service, nothing has resulted from this questionnaire presented to the carriers, and nothing may be expected in the consid- [fol. 1232] eration of the returns to this questionnaire that will materially lessen the cost of switching in Chicago, or materially benefit. (Tr. 2669.) We did not consider in that connection any improvement in the way of lessening the distance or the time and the use of empty cars for

loading (Tr. 2669); or a modification of the rules which would permit a shipper to load any car he had; that does not come within the purview of our committee, but it was one of the things that was suggested in the record. I know that it is in there and I think the particular case you have in mind is the American Maize, and that has been studied. It has been given some thought, but it is a big, broad question, and I do not like to say anything about it until the committee has had a change to discuss it. That has not been referred to the carriers. That comes within the purview of another committee, the American Railway Association. (Tr. 2670.) In the preparation of this data for circulation to the carriers I did not confer with the representatives of the Interstate Commerce Commission at its office here. (Tr. 2670.) I did not know that the Commission had asked anyone to do that. I read the decision, and if the Commission said there was room for improvement, or words to that effect, I missed it. Since the closing of the record in this case in 1928, and since the decision of the Commission, all that has been done with reference to the suggestions of the Commission has been the bringing of the matter before the Committee on Coordination, the appointment of a committee of which I am secretary, with no action taken up to this time except to circulate a questionnaire to which replies have been received from all but two members, and from which I cannot see that anything is held out as a hope for improvement in the service or economy in operation in the switching district. (Tr. 2671-2672.) That is, of course, economy [fol. 1233] of the kind you suggest, but the railroads are making other economies all the time. It is our business. I do not think anyone can doubt but what the railroads have been economizing to every extent since 1928; but whether the economies are keeping up with the depression or not, I do not know. There have been no substantial economies resulting in a substantial lessening of the cost of doing switching in Chicago, or brought about, considering the normal flow of traffic. (Tr. 2672.)

Cross-examination.

By Mr. Shafer:

The subcommittee of three was organized to study this particular subject, but our questionnaire did not go into

the question of abandoning interchanges now existing, with the possibility of changing the interchange of traffic. We did not study any questions as minutely as that. We leave that to the judgment of the railroads to pick the points they wish to make or can make changes. So far as individual railroads are concerned, our committee has not considered establishing different or new points of interchange (Tr. 2673); but I think interchange points are changing all of the time, every day, but not as a result of the suggestion made by the Commission; that goes on all of the time. (Tr. 2673-2674.)

Cross-examination.

By Mr. Hufsmith:

I have a copy of the questionnaire sent to the railroads by the committee of three. I took care of the preparation of the questionnaire. I drafted it and the committee went over it, checked it and approved it as I wrote it. The committee did not suggest it wanted it sent out or for me to prepare it and send it out (Tr. 2674); but they checked it. [fol. 1234] The committee determined as to whom the questionnaire should be sent, and directed it to be addressed to the terminal superintendents of the various carriers moving in and out of the Chicago district. There was some discussion about calling in the superintendents and talking with them, rather than sending out the questionnaire (Tr. 2675); but this method was decided upon as being the best to get them on record. (Tr. 2676.) In my judgment this was the best method to get them on record. In trying to eliminate circuitous routes, I think the more favorable policy is to direct a questionnaire to the carriers who participate in but a portion of the movement and let each party, with his limited knowledge, prepare an answer to the questions of that character. (Tr. 2676.) As to whether or not it would have been better to have all shippers and carriers engaged in the various movements get together and collectedly figure it out, I told you before that the committee decided first to send out the questionnaire. Now if any further questions arise that seem to require conference as among the railroads, I am sure the committee will call them together. (Tr. 2677.) If we are to cut down circuitous routes or to determine the question, I do not see how

one carrier alone can do that. A carrier having one-quarter of a haul in the district might or might not be able to determine by answering a questionnaire what might be a more advantageous routing of that merchandise between two industries in the district. (Tr. 2678.) It would have ample facilities at its command or the command of personnel to determine the fact; we all work for them. We did not suggest the cutting down of any of the circuitous routes. We are developing the facts, and we asked the carriers for information requested in the questionnaire. We asked them to comment on shippers' and carriers' criticisms as [fol. 1235] shown in Exhibit 83. (Tr. 2679.) I said that you could expect no major improvements in the situation. I cannot say whether or not the Pennsylvania Railroad, for example, made suggestions as to avoiding circuitous routings. I do not remember whether it did or not. We have called no meeting of shippers and carriers in the district to discuss this problem. I cannot say that would be a good idea. (Tr. 2680.)

Cross-examination.

By Mr. Cardy:

I said that since 1920 the carriers, in handling the traffic as a whole in the switching district, had made a reduction in expenses (Tr. 2681); that they had cut the corners, so to speak, but per unit I do not know, I do not think so. I cannot state the percentage of that reduction since 1920. We do not get that data. My opinion is that, comparing traffic conditions today with those in 1928, if we had a cost study today it would show a greater cost per unit now than then. (Tr. 2682.) If we need information as to cost of movements of traffic we ask the carriers for it, and I understand they furnished the information in the year 1928 shown in this case. (Tr. 2683.) There were a number of instances in the exhibits with reference to specific changes for the shortening of hauls which we submitted to the particular carriers concerned. (Tr. 2683.) I said we did that, but we went even further and took up the whole thing in a broader way. Regarding an interchange between the Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt at Blue Island junction, it was explained, as I recall now, that the point of interchange between those two lines is the

most economical one, considering the traffic that is being hauled, and as to the 15-mile haul to East Chicago and back, if it is with the current of traffic, may or may not cost money; [fol. 1236] it all depends on how you look at it. That works with any distributing system, the same as with railroads. It is the same principle employed by department stores which have warehouses in the outskirts and haul stuff past a man's house in order to get it to the warehouse for distribution. The mail people do the same thing. It is the same principle. I do not know how the carriers computed their costs. (Tr. 2684.)

Mr. Davis: We rest our case now, in order to cut out any argument.

Mr. Walter: If the examiners please, so far as my clients are concerned, we are ready to rest in 19610 on the case as made by the carriers.

Mr. Hufsmith: The Indiana Commission rests.

Mr. Shafer: The Illinois Commission will likewise rest.

Mr. Davis: Just a moment; you do not give me a chance. I was going to ask for an adjournment at this time until ten o'clock tomorrow in order to get certain witnesses, certain testimony ready to be put in in my case in chief. (Tr. 2689.)

Mr. Walter: I thought you had rested your case before we took the recess.

Examiner Faul: Do you withdraw your statement that you rest, Mr. Davis?

Mr. Davis: I do have certain traffic witnesses whom I desire to put on, and when I made the statement that we rested it was for the purpose of allowing Mr. Walter and the rest of them to go on. As I understood, there was some argument as to whether or not they should go on, and then I asked if I could consult my witnesses to see how soon they would be ready. If I did make the statement that we rested it was with the thought that I would consult the traffic witnesses to get them ready, but did not intend to rest my case until [fol. 1237] they were put on the stand, if they could be gotten ready within a reasonable time. I have consulted with them and think we can be ready by ten o'clock tomorrow morning, so I want to withdraw my statement now that we have rested our case, if that is permissible, and agreeable, and have the opportunity for an adjournment until 10 o'clock tomorrow morning that I may be able to produce the witnesses upon whom I have counted.

Examiner Faul: I would like to ask Mr. Walter whether he has any witnesses whom he could put on in the meantime?

Mr. Walter: No, I have not. I will offer no evidence in 19610 unless there is something further presented. I do want, however, before we adjourn, to call attention to the fact that I have here numerous bills of lading of shipments covered by Exhibit 110, none of which carries either of the notations named by Mr. Vivian. They are cars covered by the exhibit. (Tr. 2691.)

Mr. Davis: Your Honor, if you want to continue with this bill of lading matter that Mr. Walter has handed to me, and ask Mr. Vivian to look at it, I would like to ask Mr. Walter if it is a fact that on each of these bills of lading the rate is shown, and is that the state rate or the interstate rate? (Tr. 2693.)

Mr. Walter: It depends; some of them there—one is a team track movement; that is interstate as well as state, the rate to the team track.

Mr. Davis: I think the record ought to show in connection with Mr. Walter's statement, that the rates are shown in the column on the bill of lading where the rate is to be shown; in other words, there is a column in the bill of lading to indicate the rate that they desire.

Mr. Walter: No, not the rate they desire, but the rate that applies, and that generally is the intrastate rate. (Tr. [fol. 1238] 2694.) The shipper routed them, naming the initial carrier and the delivering carrier, but specified no junction. (Tr. 2695.)

Here were two available routes by the Pennsylvania, and any of the connecting lines. The Pennsylvania could handle it one or two ways. It was stated here that bills of lading showed in every case a request to route via the intrastate route, a specific request. I am showing bills of lading to show that it is not there.

Mr. Davis: If your Honors please, I think we are quibbling over a technicality. I think I did make the statement that the information we asked for was in connection with the shipments where the shipper had routed them or had asked that the state rate be protected. (Tr. 2696.) Perhaps that was unfortunate, but I did not intend that the words used were to be taken as appearing somewhere on the bill of lading. I had in mind just what these bills of lading, which you have before you, indicate where the

shipper has shown the rate he wants to apply. I interpreted that as a request to protect that rate. If that rate is not applicable over an interstate route, but over a state route, it was my conclusion that it was tantamount to asking that the shipment move via the route over which the rate applies. (Tr. 2697.)

Mr. Walter: Well, now, I want to make it clear, and if you will now agree that the fact is that the shipments moved by one of two available intrastate routes, that is satisfactory to me, but I want to negative the proposition distinctly and completely that the shipments avoided the movement by the Pennsylvania Colehour yard.

Mr. Davis: I wish I were in a position to do that, but those state rates shown on the bills of lading are what pre- [fol. 1239] vent me from doing it.

Mr. Walter: Well, in every case would not the shipper show the rate on the bill of lading?

Mr. Davis: That is, the state rate, you mean? (Tr. 2697.)

Mr. Walter: Whatever the rate is. They may put in the interstate rate or the intrastate rate. Here were two routes that were open via the Pennsylvania. One was a state route between the consignor and consignee, and one was an interstate route. The record does not show, and the bills of lading do not show, which one of those two routes it was to go.

Examiner Faul: But they do show the intrastate rate.

Mr. Walter: They show the intrastate rate or the rate that applied via the intrastate route, but there was no statement on the bill of lading to protect the intrastate route or to take it off.

Examiner Faul: No, Mr. Walter, but the carriers under that notation were required to handle the shipment on the intrastate route, were they not?

Mr. Walter: Perhaps they were, Mr. Examiner, but they are complaining that we took business away from them and had them do it via a route that was not open under the tariff: that we did not want an interstate movement. (Tr. 2698.) We took an open route and paid the open rate.

Mr. Davis: I think it is very clear now on the record, if your Honor please.

Mr. Walter: Of course, I think the record shows clearly that in the instance of every one of these shipments there was an open route intrastate via the Indiana Harbor Belt,

and what I wanted Mr. Kelly for was to prove that he himself, as the agent of the Pennsylvania Railroad, was routing these shipments and sent them on the intrastate route [fol. 1240] in order to get some of the business that otherwise would go to the Indiana Harbor Belt. (Tr. 2699.)

Mr. Davis: If the Examiner please, I would like now, since Mr. Walter has made that statement, to ask him this, because I was just a little bit confused in my own mind before: As far as the Indiana Harbor Belt is concerned, there was an exception to that in regard to exchanging traffic with the Baltimore & Ohio Chicago Terminal, was there not?

Mr. Walter: But we have shown that there is an interchange with the Baltimore & Ohio Chicago Terminal without going into Indiana.

Mr. Davis: But I mean on the natural route, as we call it, not as you call it. Their interchange with the Baltimore & Ohio Chicago Terminal would be in Indiana.

Mr. Walter: On interstate traffic. (Tr. 2699.)

Mr. Davis: All right.

Mr. Connell: I think, Mr. Walter has made it perfectly clear that the shipper named the intrastate rate which the carrier was obliged to protect.

Mr. Walter: That is not the question that was presented in the exhibits at all; it is not what Mr. Vivian asked the agents to report. He asked them to report those instances —well, I will have to refer to his testimony when I get it and see exactly what he said. Mr. Davis very graciously assumes part of the burden of the mistake on the part of the carriers. (Tr. 2700.)

Mr. Davis: Mr. Shaffer and Mr. Hufsmith raised some question regarding the notations on exhibits 99 to 103 inclusive and 104 and 105. (Tr. 2700-2701.) The objectionable part of the notation on these exhibits as I recall, starts with the word, "caused"—"by the refusal of the State [fol. 1241] Commissions to permit present interstate rates to become effective on intrastate traffic." I am willing from the notations that have been made to have those parts of the legends on the title page of those exhibits stricken, beginning with the word "cause" so that that will leave the statement to read as far as Exhibit 100 is concerned, "Restatement of Exhibit 111-B, I. C. C., Docket 19610, showing revenue discrimination of carload commodities handled in switching service."

Mr. Hufsmith: I have no objection to that except as to one word and that is to leave out the word "discrimination." (Tr. 2701.) The word "discrimination" assumes what we are striking out the words "caused by the State Commission."

Mr. Shaffer: I think Mr. Davis I commenced my motion with the words "revenue discrimination caused by refusal of state Commissions," etc. (Tr. 2702.)

Mr. Campbell: Why not say alleged? (Tr. 2702.)

Examiner Faul: Mr. Davis, will you accept this latter suggestion calling it alleged discrimination?

Mr. Davis: Surely, if that will satisfy them.

Mr. Shaffer: That applies to exhibits 99 to 106, inclusive.

Examiner Faul: We will adjourn at this time until 10 o'clock tomorrow morning May 5, 1932. (Tr. 2703.)

W. H. WARD, called as a witness on behalf of respondents, was sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am general freight agent of the Indiana Harbor Belt Railroad.

Mr. Walter: We will concede Mr. Ward's qualifications [fol. 1242] as a traffic man.

The Witness (continuing): The Indiana Harbor Belt is an industrial switching carrier engaged in serving industries on its line and it also handles overhead traffic. It is a switching carrier, the largest one I know of. (Tr. 2704.) There are approximately 493 industries located on it. (Tr. 2705.) A great number of them are served exclusively by the Indiana Harbor Belt. On our line, a district commonly known as the Calumet district is located on both sides of the Indiana-Illinois line. Most of our industries are in that district and they are located on both sides of the Indiana-Illinois state line, some in Illinois and some in Indiana. (Tr. 2705.) A great many of our assembly yards and interchange tracks are located very close to the state line and some of them overlap it. (Tr. 2705.) On our line the state rates both in Indiana and Illinois are 2½¢ per 100 pounds,

both for 1 and 2 line hauls. The interstate rates are 3¢ per 100 pounds for single line, 3½¢ for 2 lines, all subject to a minimum of 60,000 pounds. A one line haul interstate is a 5¢ per 100 pounds higher than for a single line intrastate haul and if a two line haul, the interstate rate is 1¢ per 100 pounds higher than for an intrastate movement and that situation is a most unhappy one so far as the Indiana Harbor Belt is concerned, (Tr. 2706) because many of our industries are so located that we make their shipments interstate practically when they leave the plant. Where they are competitive industries, other lines get in there and they can in most cases protect the state rate, and that puts us out of business; we cannot solicit it; and another thing, this situation has made us a load of unhappy customers on our line who are not contented. (Tr. 2707.) We have industries that are served exclusively by the Indiana Harbor Belt, one being W. J. Holliday & Co., which deals with iron and steel, rod, bar, sheet, etc., and there are [fol. 1243] a number of other industries located either on our road or within the district that deal with those same commodities. (Tr. 2707.) The Holliday shipments handled by the Indiana Harbor Belt, would always be moved interstate when destined either to Indiana or to Illinois because our connection with the plant is made in Illinois, although the plant itself is located in Hammond, Indiana and in order for the Indiana Harbor Belt railroad to move a car out of the plant or into the plant, it must necessarily cross the state line. Other companies that handle these same commodities that are located so their shipments could be handled state, are the Ryerson Plant, an Illinois Company, the Inland Steel, in Indiana, (Tr. 2708) and any number of them all over the district. We have quite a number of industries manufacturing animal feed and fertilizers on our line, one of which is the Riverdale Product Co., located in Calumet City, Illinois, from which plant it is not possible for us to move shipments into Illinois without crossing the state line, nor is it possible for our line to move their shipments into Indiana without crossing the state line and absolutely every shipment from that plant via our road would be interstate commerce, subject to the rates previously given as applicable on interstate shipments. (Tr. 2709.) There are several industries manufacturing animal feed and fertilizers on our line, 2 or 3 at Blue Island, Hales &

Hunter and 2 or 3 in Indiana (Tr. 2709-2710) and those located in Illinois can have their shipments moved to points in Illinois within the Illinois side of the district on state rates which would likewise be true on a movement from the Indiana plants to points within Indiana. The Riverdale Products Co., is not served by any other road. It is local to our line. The bulk of the traffic originating at industries in Indiana destined to points in Illinois would be an inter-[fol. 1244] state movement and the bulk of the business originating in Indiana goes to Illinois destinations on our line; the bulk of it moves from Indiana to Illinois. (Tr. 2710.) These industries that ship as I have just described from Indiana to Illinois, have competitors dealing in the same general commodities that are located on the Illinois side of the line in the district, and the industries located on the Illinois side of the Indiana-Illinois line within the district, shipping to Illinois points within the district would pay the 2½¢ rate as compared with the similar industries I have described and located in Indiana shipping into Illinois on a rate of 3¢ for 1 line haul, and 3½¢ for 2 line haul, most of it being 2 line hauls. The industries that ship within the Illinois side of the district for a 2 line haul pay 2½¢ per 100, the same as per single line. (Tr. 2711.) The American Maize Products Co., is located on our line at Roby, Indiana, and any shipment by that Company to the Illinois side of the district would pay the interstate rates. The Corn Products Refining Co., producing exactly the same products as the American Maize Co., is located at Argo, Illinois. I know as a traffic man that shipments are made from each of these plants into the district; that there are such shipments. (Tr. 2712.) Shipments from the American Maize Products Co., to the Illinois side of the district would cross the Indiana state line and would be interstate because originating in Indiana but shipments from Argo going to destinations within the district on the Illinois side of the line would move intrastate and if by a single line or a 2 line haul, would pay 2½¢, while the American Maize Co., for a single line interstate would pay 3¢ per 100 pounds. A 2 line haul from the American Maize Co., to destinations on the Illinois side would pay 3½¢. (Tr. 2713.) For a 3 or more line haul, that company would pay 4¢ to Illinois [fol. 1245] destinations but we do not have any hauls like that, or practically none. (Tr. 2714.) In Illinois, a 3 line movement would pay 3¢. We have a great number of in-

dustries on our road that deal in oil, located on both sides of the Indiana-Illinois state line. There is a large refinery at Whiting, Indiana, (Tr. 2714) which ships both locally within the district on the Indiana side of the line and interstate into the district to the Illinois side. (Tr. 2714.) At Norpaul, our station which might be called Franklin Park, Illinois, there is an industry that ships gasoline and commodities of that kind to points in the Illinois part of the district and the institution at Norpaul, located within the district, I think ships to points on the Indiana side also.

There is a small industry on our line in the oil business at Blue Island which ships mostly fuel oil, while the Norpaul plant ships refined gasoline. Blue Island is in Illinois, (Tr. 2715) and within the district and their shipments within the district on the Illinois side move intrastate. The refinery at Whiting ships fuel oil; it ships all kinds of oil. Prior to the Commission's decision in 19610, the same rate applied whether the shipments were state or interstate. There were certain exceptions that were not on the Lowrey basis but mostly for 1 line hauls. In fact, almost entirely for 1 line hauls, but since the decision in 19610, the rate situation is as I have previously described it. (Tr. 2716.) Under present conditions, it is not difficult for me to tell what the rates are but it might be difficult for the shipper. For instance our connections with the Monon and the Erie are both shown as being in Hammond. As a matter of fact, we cannot operate through that interlocker even if we took one car at a time without taking the car into Illinois and making it interstate business and the shipper would have no means of knowing that unless he asked me. He might [fol. 1246] think he was going to get the state rate but when it came time to settle, he would find he didn't get it.

Cross-examination.

By Mr. Walter:

The Indiana Harbor Belt has about 100 and some odd miles of main line, about 60 per cent of that being in Indiana. (Tr. 2717.) The Eastern terminus is Dune Park, Indiana, outside of the district. The first station on the East within the district, is Gibson, Indiana, our station name for it; but it is in Hammond. From Dune Park to Gibson is 18 miles; (Tr. 2718) practically all outside the Chicago

Switching District. That is the only part of our line outside the district. From Gibson, Indiana to the State line is about 5 miles. We have no main line in Indiana other than the line from Gibson to West Hammond. There are no branches; you have everything that we have in that, but we have a line to Indiana Harbor, the Eastern point of the district on our line for the Northern part of our line right on the lake. (Tr. 2719.) I cannot state the distance to Colehour via our line from Indiana Harbor or to the state line near Colehour from Indiana Harbor, but it is a comparatively short distance. I cannot give the approximate number of miles of our line within the switching district in Indiana. (Tr. 2720.) I have connected with this switching case from its inception and after the Commission's decision, we published the interstate rates. I don't know whether any carriers published rates not required to be published by that decision. (Tr. 2721.) I don't know what action the Elgin, Joliet and Eastern took towards publishing switching rates between points not required by the Commission's decision. They published a 2 line rate from Gary into the switching district and I don't know whether it was required or not by the Commission's decision, but they seemed to think it was. They published the regular [fol. 1247] switching rate. (Tr. 2722.) The Elgin, Joliet & Eastern published the same rates as applied within the district interstate, effective whatever date the interstate commerce commission said, December 10. I am a member of the switching committee, but the Elgin, Joliet & Eastern isn't but they have a good deal to say about switching rates on their own railroad and the through rates on their line with other railroads. (Tr. 2723.)

Mr. Walter: Prior to December 10, what had been the most Eastern point on the Elgin, Joliet & Eastern which carried the Chicago Switching district rate?

Mr. Davis: I object to that, that is not cross-examination. (Tr. 2723.)

Examiner Faul: I sustain the objection because he did not testify to the situation in regard to the Elgin, Joliet & Eastern, he testified in regard to the rates on his own line. (Tr. 2724.)

The Witness (continuing): I cannot, with any degree of accuracy give the number of miles in the Eastern part of the district that are jointly operated by the Elgin, Joliet

& Eastern, the Pennsylvania, the Chicago, Burlington & Quincy or any other line. It is operated some one way and some another. (Tr. 2725.) Where we jointly operate, there are instances where both perform switching service and some instances only one performs the switching service. We operate both ways. (Tr. 2725-2726.)

Between River Junction and Hegewisch, we operate our own train on that line under trackage; and not for anybody else; when you get to the industry, that is a different thing, that is spotting allowance. (Tr. 2726-2727.) The traffic originating on that line we get right at the industry. We get it from all of them on that line and so does the Pennsylvania. I said we got the traffic at the industry but spotting inside of the industry is performed by the Penn- [fol. 1248] sylvania but they do it for our account. It is as much our engine as the Pennsylvania lines, and that is a one line haul. (Tr. 2727.) Whenever we get the traffic at 108th or 112th St., yards, we apply the one line rate because as I told you, the Pennsylvania engine is as much ours as theirs. They may own it but it is working for us when it is getting the cars out of this industry. We have these spotting arrangements at almost all of the plants on our railroad; it is an economical way to handle it. There are some instances where carriers go in and get their own cars but in the majority of cases it is done by one engine, both for the convenience of the plant and the carrier. (Tr. 2728.) All traffic originating at industries on the Calumet River Railroad is competitive as between our line and the Pennsylvania. We can reach Illinois destinations as an intrastate movement from those industries. (Tr. 2729.)

Cross-examination.

By Mr. Hufsmith:

The biggest part of our business moves interstate. I would not care to approximate the percentage; I have not checked it up recently; we have made statements which I think are in this record; they are certainly in the original case showing how much of it was interstate and how much intrastate. I could not give my judgment in the matter. I would not care to approximate it either as 60 per cent or

80 per cent interstate. My judgment is that a major portion of it is interstate (Tr. 2730), but how much is and how much not, I do not know. I do not know whether 60 per cent of our traffic is interstate commerce. I have been in the traffic department of the Indiana Harbor Belt ever since its organization, 20 years. I know much of our traffic flows interstate and would say offhand that it is in excess of 60 per cent. (Tr. 2731.) I would prefer to give you the actual figures. If you will give me time, I will give them to you. I don't like to testify on guess work and will be [fol. 1249] glad to get the figures. (Tr. 2732.) All of our business is switching. We do not have line haul service at all. We serve a district outside the Chicago District, but it is served exactly the same way as in the district. It is a switching service outside of the Chicago Switching District. All facilities of our road are devoted to switching service within the Chicago District and adjacent territory. The present interstate rate within the Chicago District is 3¢ and if we make delivery after it is passed through the hands of 2 or 3 carriers, there is a 4¢ rate. (Tr. 2733.) A situation exists within the Chicago Switching District where business would be directly competitive between two industries and the one having an intrastate route available as against an interstate route, which has a differential of 1¢ under the interstate shipper where the movement was via 3 lines. (Tr. 2734.) In an intrastate movement the 1 and 2 line movements pay the same, 2½¢, while a 1 line interstate movement is 3¢. (Tr. 2734-2735.) There is no place in the tariff where the interstate rates exceed state rates by more than 1¢. (Tr. 2735-2736.)

Cross-examination.

By Mr. Brown:

The American Maize Products Company is located at Robey, Indiana, and the Hales-Hunter Company and Arcadia Mills are located at Blue Island, on our road. The Standard Elevator Company is located on our road at Hammond, Indiana. Prior to December 10th the rate on corn via our road from either the American Maize Products Company or Standard Elevator to the Hales-Hunter plant or the Arcadia Farms Milling Company plant was 2 cents per hundred pounds, minimum 60,000 pounds. (Tr.

2736.) The Pennsylvania Railroad would not take shipments from those two plants in Indiana and turn them over [fol. 1250] to us for delivery to either the Hales-Hunter plant or the Arcadia Farms Milling Company plant at Blue Island. (Tr. 2737.) It would not come that way from those two plants in Indiana. I know that. (Tr. 2738.)

Prior to December 10th, on grain from that connection with the Pennsylvania Railroad in the Chicago district to the Blue Island plants, when the grain traveled in the Chicago district, I don't know whether the rate of $4.95 per car would apply to that business or not. (Tr. 2738.) I said I did not know whether that rate would apply to such a movement as that, or not. We never had such a movement and never will have one. I think we had such a tariff. I cannot say what the charge of the Pennsylvania Railroad would be in that case. We do not have joint operations with the Pennsylvania Railroad to the Robey plant of the Standard Elevator. We have our own line at both places, so we could serve both plants, and do, with our own rails. (Tr. 2739.) We interchange with the Pennsylvania Railroad in the Chicago district.

Examination by Examiner Faul:

The exceptions to the Lowrey basis apply mostly for single-line hauls, and so far as our line is concerned those exceptions are all below the Lowrey basis; there are some exceptions on lines serving the northwest part of the district that are over. But I wouldn't say that the service we perform in connection with those movements is the same as those on which we receive the full Lowrey basis; the big exception we have is on refuse material. (Tr. 2740.) Most of our plants with very large operations give that refuse to us in big units of 10 to 15, 20 or 25 cars at a whack; that is the principal exception we have. Grain takes a [fol. 1251] lower basis; the grain rate on our line is very little different than the others, 2 cents against 2½. We get very little grain business to handle, but it is handled the same as the other commodities, in the same train and in the same way as our regular business is handled, both within Illinois and in Indiana. (Tr. 2741.)

Cross-examination.

By Mr. Cardy:

Our company serves a number of stone industries in the Chicago district, located at LaGrange, McCook and Bellwood, all in Illinois, and they are the only ones within the district. The movement of stone is somewhat different than the movement of commodities generally, such as I have described. (Tr. 2743.) We have no stone industries in Indiana. I have made no investigation as to whether or not freight rates have any connection with the movement of stone to interstate points in the district, but I know the stone business has all been shot to pieces, but whether it is from the rate or the general condition, I don't know. We do not get anywhere the stone we did. The interstate stone business within the district has fallen a great deal within the last year. I have not made any investigation or studied to determine whether or not an increase in the instrastate rates on stone within the district would have the effect of reducing our revenue, rather than increasing it, and I haven't any judgment on that; I haven't formed any opinion. Up to a few years ago stone moved in a very large volume over the Indiana Harbor Belt, but more and more of it is being trucked every day. Personally I made no effort to handle stone via our line that is now being used in the construction of the Chicago post office. We did not attempt to prescribe a rate that would actually move the stone, and made no effort to do so. I have no knowledge [fol. 1252] as to the rate that would have permitted the movement of stone from those quarries on our line to the post office. (Tr. 2745.) But I made no effort personally to obtain that movement for our railroad. I don't know whether any negotiations were made by anyone else, with our company or the company which served the post office site. We have no sand or gravel plants on our line in Illinois or Indiana. I don't think there is any difference in the movement of stone in the district and the movement of other traffic moving from industries in Illinois. (Tr. 2746.)

Recross-examination.

By Mr. Walters:

Stone is not really an exception; only in Illinois we have a lower rate on stone than we have on other commodities

applying to 100,000 pounds minimum. Refuse, of course, is a per-car proposition; per car regardless of minimum. We would handle one car on the rates. I cannot say the customary number per day, but we might get one car today and 20 tomorrow; and our rates are not predicated on the number of cars. (Tr. 2747.) We made this rate originally to aid our industries in getting rid of something that was required in order to operate; that was the reason for it originally. It is customary for this refuse to be handed to us in lots of more than one car. The Chicago Junction, while not exactly a part of the same system as the Indiana Harbor Belt is, is under the same general management. We have a number of hauls on our line of a mile, or such matter.

Mr. Walter: You are my witness now; I am on direct examination now. (Tr. 2748.)

Direct examination.

By Mr. Walter:

[fol. 1253] I don't know of any reason why a different rate should be applied for a one-line haul of 1 mile on our line than on the Chicago Junction for 1 mile. (Tr. 2749.) The Elgin, Joliet & Eastern rate prior to December 1st was 5 cents per hundred pounds, which was handled as a road-haul proposition and not a switching rate, and it applied from points in Indiana to the switching district on that line that runs out along the lake near Gary up through Buffington. The Elgin, Joliet & Eastern was not a party with our line to the joint 2½-cent interstate switching rate. It was not prior to the decision of the Commission a party to any interstate switching rate on the customary switching basis. Its rate was 5 cents. On December 10th, so far as interstate points were concerned, the two-line switching rate was published by the Elgin, Joliet & Eastern between the same points in Indiana and Illinois that I have pointed out before, their line going to Gary. (Tr. 2750.) It did not bring Gary within the switching district, but it brought Gary within the switching rate. They made the same switching rates, 3 cents one-line, 3½ cents two-line. Prior to that time the Elgin, Joliet & Eastern rate had been 5 cents. It could not have been more than 5 cents, but I think on some commodities it was less; but I don't know because I would not be interested in what their local rate

was. It is a fair statement to say that prior to the effective date of these tariffs the Elgin, Joliet & Eastern had never been engaged in the switching business as a member of the Chicago Switching Committee in the Chicago switching district. (Tr. 2751.) It has not become a member of the switching committee since that time. When the Elgin, Joliet & Eastern published the switching rates it is my understanding that it expected to divide them in the same [fol. 1254] manner that the rates in the district were divided, that is, on two-line hauls, 50-50; I don't know whether we are actually accepting revenue on that basis or not; I have not checked it up. I don't know that there is any dispute about it. It would be fair if they make the switching rate, that they divide it the same as the other carriers, and we would not take less than half of the 3½ cents. We would like to get more if we could. (Tr. 2753.) The 5-cent rate was divided on a different basis, on a road-haul basis. In other words, the same as we would divide a rate from New York. It was not a mileage pro rate. We got 2 cents out of the 5-cent rate in the district; and dividing the 3½ cent rate we would get 1¾. (Tr. 2754.)

Item 75, tariff 16, of the Great Lakes Pipe Line Company of May 4, 1932, provides for absorption of railroad switching charges as published and on file with the Interstate Commerce Commission on interstate traffic and with the State Commissions on state traffic, applying from regularly established loading racks used by the Great Lakes Pipe Line Company at its pipe line terminals in the City of Chicago to delivery locations within the switching limits of the City of Chicago, as defined by tariffs lawfully on file. (Tr. 2754.) But I didn't know it up to the time you showed it to me, but it is in the tariff you showed me. (Tr. 2757.) I don't know of any higher rate than 5 cents applying jointly via the Elgin, Joliet & Eastern and the Indiana Harbor Belt between Gary and points in Indiana and the district, which have since been put on a switching basis. Yes, cement, 6½, was higher. I do not know of any rate that was higher that they reduced down to 5 cents. Our division of the 6½-cent cement rate was divided the same as the 5-cent rate. The 5 and the 6½-cent rates applied on what used to be the Chicago, Lake Shore & Eastern Rail-[fol. 1255] road, now a part of the Elgin, Joliet & Eastern, which runs along the lake shore from South Chicago to

Gary, and the traffic today between Gary and points intermediate moves on a Chicago switching district rate. (Tr. 2758.) But prior to that time it was on a different basis.

Mr. Walter: That is all. (Tr. 2759.)

Mr. Brown: Mr. Examiner, may I at this time put in the tariffs to which I referred a while ago?

Examiner Faul: Go ahead.

Mr. Brown: I want to put these tariff references into the record, showing rates that were in effect prior to December 10, 1931.

First, Indiana Harbor Belt Railroad tariff I. C. C. No. 74, effective August 5, 1930, showing on page 4 that on grain and grain screenings from connecting lines only, destined to industries on the Indiana Harbor Belt, a rate of $4.95 per car was assessed regardless of weight.

Indiana Harbor Belt tariff I. C. C. 805, effective October 1, 1931, shows that Arcady Farms Milling Company and Hales-Hunter Company, Blue Island, Illinois; American Maize Products Company at Robey, Indiana, and Standard Elevator Company at Hammond, Indiana, are industries on the Indiana Harbor Belt Railroad. (Tr. 2760.)

Pennsylvania Railroad Company tariff I. C. C. 538, effective May 30, 1931, item 170, shows rate of $4.95 per car on grain industries on that road to junctions with connecting lines on traffic moving wholly within the Chicago district, and that tariff shows that American Maize Products Company of Robey, Indiana, and Standard Elevator Company, Hammond, Indiana, are industries on that railroad. The tariffs since December 10, 1931, as far as shipments [fol. 1256] interstate are concerned go to the 3, 3½ and 4-cent basis, that is, on interstate hauls; and on state hauls they remain as they were before, $4.95 per car. (Tr. 2761.)

W. H. Ward recalled.

Cross-examination.

By Mr. Hufsmith:

Since your request regarding figures as to amount of traffic handled by our line moving interstate and intrastate, we have had this computation which I think is fairly repre-

sentative. It shows two-line business for the month of July, 1931, interstate 3150 cars or 54 per cent; Illinois state 2232 cars and Indiana state 492, making 46 per cent state business as against 54 per cent interstate. One-line business I do not have, but it runs about the same way, as far as I can figure.

A little better than half of our traffic is interstate. I have not included in this any cars we handled in line haul, or where delivery has been made out of a line-haul movement; this is all crosstown business and purely intradistrict traffic. We handle a large volume of line-haul business by delivering it to the consignee or from the consignor to the line-haul carrier. (Tr. 2763.) The switching services we perform in handling cars from our line to the consignees or from the consignors, as the case may be, are fairly comparable moves to those we make in intradistrict switching. On business we receive from line-haul carriers we receive a division of the through rate, which is shown in the division sheets issued by C. W. Galligan, agent, and in most cases is 2 cents per hundred pounds. In the participation in that [fol. 1257] line-haul movement where we do the switching within the Chicago district, our proportion under the tariff, in the majority of cases, is 2 cents per hundred pounds. (Tr. 2764.) There are exceptions to it. Take stone, for instance, and on coal, we get 30 cents per ton, which is the Chicago rate published by the trunk lines, and divisions are provided in division sheets of Mr. Galligan's edition, which provide for the application of the Chicago rate to and from our industries. The division sheets are not published or filed with the Interstate Commerce Commission. The tariffs are. These divisions with the line-haul carriers are matters of agreement. (Tr. 2765.) That divisional arrangement with the line-haul carriers has not always been the same. The 2 cents has applied for a number of years. (Tr. 2765.) When the Lowrey tariff went into effect it was less than 2 cents, but it has been increased and decreased as the various rate orders increased or decreased the through rate. Under these agreements we are getting for our switching service out of the line-haul carriers, revenue for switching cars in the district, 2 cents per hundred pounds, with the exceptions. That 2-cent division has been in effect approximately five years. (Tr. 2766.) In a two-line switching service where we are either the terminal carrier

or the original carrier, our switching service would be the same as it was on this line haul (Tr. 2767); but when you take a one-line haul it is quite different, because there is a terminal service at both ends, there being more service on the one-line switching movement than on other movements, because we have the terminal or spotting service at both ends; on the line-haul we have it only at one end. There might on the line-haul business be movements through three or four yards, and with an industry a movement through only two yards, and it might be reversed the [fol. 1258] next day. (Tr. 2768.)

Examination by Mr. Walter (Tr. 2770):

Prior to the time we entered into the joint switching rates with the Elgin, Joliet & Eastern that business was treated as line haul and now it is treated as intradistrict switching; so that on our figures today which we count as intradistrict we include all the business interchanged with the Elgin, Joliet & Eastern, while in the previous record none of those cars would be there; but they do not amount to much in any way, and we have no figures in here to show that. I think most line-haul rates were increased 10 per cent as the result of Ex Parte 103, but these particular switching rates in which the Elgin, Joliet & Eastern is concerned I think took no increase at all. (Tr. 2771.) I did not furnish the figures to Mr. Vivian for our railroad. (Tr. 2772.)

H. N. JOUVER sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am general freight agent of the Baltimore & Ohio Chicago Terminal.

Mr. Walter: We will concede his qualifications. (Tr. 2774.)

The Witness: It is purely a switching line, operating within the Chicago switching district, including Chicago Heights. We cross the Indiana and Illinois state line in the service we render within the district, at a point between East Chicago and West Hammond, Illinois. We have 377

industries located on our railroad that we serve. Some are located on our rails in Indiana and some in Illinois. (Tr. [fol. 1259] 2775.) We have industries located on our rails dealing in petroleum and its products: The Calumet Refining Company at Burnham, Illinois; Globe Oil Company at Whiting, Indiana; Sinclair Refining Company at East Chicago, Indiana; Empire Refining Company at East Chicago, Indiana; and the Peerless Oil Company at Blue Island, Illinois. These industries in Illinois have service to other industries in Illinois via a state route, and those located in Indiana have state service within the Indiana portion of the district to some points via our railroad. The companies located in Indiana ship into the Illinois side of the district and on such shipments would move on an interstate rate of 3 cents per hundred pounds, minimum 60,000 pounds, single-line haul. (Tr. 2776.) On a two-line interstate movement the rate is 3½ cents per hundred pounds, minimum 60,000 pounds, and three lines or more is 4 cents. That is not true of a single-line shipment within the state of Illinois. Our rate would be 2½ cents per hundred pounds, minimum 60,000 pounds, for one- and for two-line hauls, and 3 cents for three lines; and the same would apply for a purely intrastate movement in Indiana. We have an industry on the line dealing in iron and steel articles, which buys it raw product usually from a larger mill. There are quite a few other industries in the district that deal in iron and steel articles. (Tr. 2777.) These mills or factories are located on both the Indiana side of the district as well as the Illinois side of the district. We have a dock on our railroad at East Chicago, Indiana, and there is also a dock at South Chicago on the Belt Railway in Illinois. I know in a general way that the same or similar commodities can come into each of those docks and be shipped into the district. (Tr. 2778.) That is, from the Illinois dock into Indiana and from the Indiana dock into Illinois, each of these movements being interstate. (Tr. 2779.)

[fol. 1260] The United States Reduction Company is located on the Baltimore & Ohio Chicago Terminal at East Chicago, Indiana, and it occasionally ships into the Chicago switching district. (Tr. 2779.) Their shipments are confined to interstate movements.

Goldsmith Brothers are not on the Baltimore & Ohio Chicago Terminal. They are on the Pennsylvania Railroad

at 59th and Throop Streets. The United States Reduction Company and Goldsmith Brothers deal in pig aluminum. The Graver Corporation is located at East Chicago, Indiana, and ships tanks to the district, both state and interstate. (Tr. 2780.) The Lasker Boiler & Engineering Corporation are located on the Chicago & Alton at 33d and Lincoln Streets, Chicago, Illinois. Its product is about the same as the Graver Company, steel tanks, and it ships both state and interstate within the district. (Tr. 2781.)

The Youngstown Sheet and Tube Company is located on the Indiana Harbor Belt at Indiana Harbor, Indiana and makes interstate shipments within the district but I do not know that it ships intrastate. It ships from Indiana into Illinois. The Republic Steel Corporation is located at South Chicago on the Pennsylvania Railroad on the Illinois side of the line. It has made shipments to points on our road in Illinois. The two industries last named manufacture various iron and steel articles. Confining the matter to their shipments, to the particular industry I have in mind they ship steel bars; (Tr. 2783) and as to the other industries I have mentioned, I have referred to what they ship and not what they manufacture. (Tr. 2783.)

Cross-examination.

By Mr. Walter:

Our company has 109.20 miles of main track railroad in Illinois and 10.2 miles in Indiana, or a total of 119.22 [fol. 1261] miles. Prior to December 1, 1931, our road was a party to joint rates with the Elgin, Joliet & Eastern Railway to points within and from the Chicago Switching District on a road haul basis. (Tr. 2784.) Since December 10, there has been a reduction in the rates and divisions. (Tr. 2784.)

Mr. Walter: Was there opposition on the part of yourselves and other lines in the district participating with the Elgin, Joliet & Eastern Railway on a switching basis?

Mr. Davis: I object to that. That is not cross examination and it is getting into the family secrets of the railway. (Tr. 2785.)

Mr. Walter: I propose to prove by this witness, if the Examiner please, that when this decision came out, the Baltimore & Ohio Chicago Terminal, the Indiana Harbor Belt

and practically every line in the Chicago Switching District objected to joining the Elgin, Joliet & Eastern in these switching basis rates because they are reductions in revenue not required by the decision of the Commission and that the Elgin, Joliet & Eastern and its allied interests forced these lines to yield one by one. (Tr. 2785.)

Examiner Faul: The objection is sustained. The record shows that the switching rates are in effect. I think that is the answer. (Tr. 2786.)

Mr. Walter: I take an exception. (Tr. 2787.)

The Witness (continuing): The joint through rates to and from the switching district in which we participated with the Elgin, Joliet & Eastern Railway, prior to December 10, were line haul rates and divided on the line haul basis, but now our line is a party to joint through rates with the Elgin, Joliet & Eastern on a switching basis either as a part of a 2 line haul or a part of a 3 line haul at the [fol. 1262] rates prescribed by the Commission for interstate movements. The division is on the basis that customarily is applied. (Tr. 2787-2788.) Our line connects with the Pennsylvania Railroad at 59th St., but not at 49th St. It crosses our line at 49th St., but there is no facilities there for interchange of traffic that I know of. We cross the Pennsylvania at 49th St., but it is not a direct connection. Our tariff shows where the Pennsylvania comes on our railroad to deliver to us at 49th St., but the hold track is located between 49th and 59th Street (Tr. 2788), which extends approximately 10 blocks. It is a long lead track. We receive from and deliver to them freight on that track and the tariff states that the connection is at 49th St. Our longest interstate haul in the district is approximately 35 miles and our shortest hauls intrastate are 5 feet, 10 feet and 50 feet. (Tr. 2789.) We may have interstate hauls of 50 feet. You cannot determine by the mere statement of the rate on intrastate or interstate movements, the measure of service that is performed under the respective rates. The only way you can do that is to average it by taking all of the cars. (Tr. 2790.) In making road haul rates, the commodity has something to do with it, but in making switching rates, in the Chicago District, we do not take cognizance of the commodities. (Tr. 2790-2791.) Since 1911, the Chicago district rates have been handled regardless of commodity or distance with cer-

tain exceptions existing prior to December 10, both on interstate and intrastate applicable to cinders and refuse material. The minimum revenue per car on cinders was $15.00 and $10.00 per car on refuse material for a single line movement. Refuse material, Mr. Examiner, as we have it described, covers excavating material and refuse material from factories, and cinders take different fates from the refuse material. $15.00 per car applies on cinders [fol. 1263] locally on our railroad and the refuse $10.00 per car.

Cross-examination.

By Mr. Cardy:

There are stone plants on our line at McCook and Thornton, Illinois. We have none in Indiana. Since the order of the Commission in this case became effective, intrastate rates have in fact been increased 10 per cent. (Tr. 2792-2793.) And at that time there was no increase in the interstate rates. I have made no investigation to determine whether or not the effect of the increased rates on crushed stone will actually result in an increase in revenue. There has been a material change in the last year in the movement of stone in the district on our line. I do not know that the present rates on stone in the district intrastate has had any effect whatever on the movement of intrastate traffic in the district. (Tr. 2793.) The 10% increase in intrastate rates I referred to, covered the exparte 103 increases which will expire next year under the tariff as now filed. Those increases have been applied on our railroad on all intrastate traffic and covering all commodities whether they move under the Lowrey basis or on exceptions to the Lowrey basis. It was a straight 10 per cent increase. (Tr. 2794.) This increase was not applied on interstate traffic. I have made no investigation since the 10 per cent increase went into effect on stone to see whether or not it has had any affect on the movement of traffic in the district.

Cross-examination.

By Mr. Hufsmith:

Our service is entirely a switching service. About 40 per cent of our business is straight switching service,

which originates and terminates in the Chicago District (Tr. 2795), and about 60 per cent of the cars handled are delivered to or received from line haul carriers on which we render a purely switching service. I think our company [fol. 1264] handles traffic to or from line haul carriers with the same engines and crews that switch cars originating and terminating within the district. (Tr. 2796-2797.)

Examiner Faul: What is the difference in the service as between a shipment moving from a point outside of the district going through the district to a point beyond the district as compared with the movement of a shipment that is entirely within the district as far as the Baltimore & Ohio Chicago Terminal is concerned.

The Witness: I would suggest, Mr. Examiner, that you ask that question of an operating man. He would be more familiar with the operations than I am. He might have some difference in the operations; I do not know that he has, but he might have and I would rather you would let him answer it. (Tr. 2801.)

I said that about 60 per cent of our business we receive from or deliver to line haul carriers (Tr. 2819), and for our service in handling that character of traffic, we receive 2¢. (Tr. 2821.) This 60 per cent of traffic going beyond the district would not be affected by the rates that would be prescribed in this case. (Tr. 2821.)

Mr. Davis: Now, if the Examiner please, I thought I had another witness, but he is not here so I will now rest my case in Docket 19610.

Mr. Walter: Three witnesses were to be furnished here without subpoena at our request, if your honor please, and two of them are here so perhaps I should put them on. (Tr. 2821.)

William McMaster was duly sworn and testified as follows:

Direct examination.

By Mr. Walter:

Am purchasing agent of the Indiana Harbor Belt and have been connected with it between 25 and 30 years. I [fol. 1265] purchase various materials used by our company which includes coal and lumber.

I have nothing to do with making contracts for services to be performed by contractors for our road, and deal only with supplies. I buy lumber from various lumber dealers (Tr. 2822) including the Edward Hines Lumber Company (Tr. 2822). I heard about the filing of a petition with the interstate commerce commission by various concerns in the Chicago district in this case, asking the setting aside of the order of July 31, 1931, and to reopen the proceedings and to assign it for further hearing. I took no action in the formation of a committee to deal with that matter and was not a member of the committee appointed to consult with the coal interests. Mr. A. A. Adams, traffic manager of the Edward Hines Lumber Company, was in my office. I buy lumber from that company. I asked him to withdraw from the case and take the name of the Edward Hines Lumber Co., off that petition. (Tr. 2823.) I did not talk to any other members.

Mr. Davis: I move to strike out all of the testimony of this witness. (Tr. 2825.)

Examiner Faul: The Examiners are unable to see where this testimony in any way will be pertinent to the issue before us in this proceeding. Furthermore, Mr. Walter has stated that it is not directly pertinent to the decision of this case and because of the fact that the matter has already been brought to the attention of the Commission, the examiners will sustain the motion.

Mr. Walter: And to that I except.

Mr. Hufsmith: I join in the exception.

Mr. Walter: Mr. McMaster, were you a member of a committee of three representing the Chicago, Burlington & [fol. 1266] Quincy, Indiana Harbor Belt, and Illinois Central Railroads that called on Mr. George Reed, Vice President of the Peabody Coal Company and asked him to see that the name of the Illinois Coal Traffic Bureau was withdrawn as a petitioner?

A. No, sir. (Tr. 2831.)

Mr. Davis: Just a moment; the same objection.

Examiner Faul: The examiners will sustain the objection. (Tr. 2831-2832.)

Mr. Walter: I ask that the record be preserved so that I may appeal to the Commission.

Mr. Hufsmith: The Indiana Commission joins in the request also.

Mr. Shafer: And likewise, the Illinois Commission joins.
Examiner Faul: It will be so understood. (Tr. 2833.)

R. A. FELDES, duly sworn, testified as follows:

Direct examination.

By Mr. Walter:

Am Assistant to the Vice President of the Indiana Harbor Belt Railroad and general industrial agent. As Assistant to the Vice President, I perform general executive duties and work as industrial agent, my duties are in connection with the location of industries. (Tr. 2834.) I was not a witness in the hearing in 1928 but have been with the company during all of that time. (Tr. 2834.) I do not know that at that time our company had pending a contract for the erection of a water tank at a point on our line on which Roberts and Shaffer Co., were bidders or interested in the contract and I did not talk with them about it.

Mr. Walter: Did you ask them to withdraw their name from the petition signed by various parties to which they [fol. 1267] were signatories, dated September 21, 1931? (Tr. 2835.)

Mr. Davis: Objection.

Examiner Faul: The objection is sustained. (Tr. 2835.)

Mr. Walter: Did you talk to the Secretary of the East Chicago Chamber of Commerce and request that organization to withdraw its petitioner?

Mr. Davis: I object.

Examiner Faul: Sustained. (Tr. 2836.)

Mr. Walter: At that time, was there pending a proposed improvement in the nature of a viaduct at East Chicago, the expense of which was to be prorated between the city and the railroad?

Mr. Davis: I object to that as having no bearing on this case whatever if there was a viaduct pending or if there were a dozen viaducts pending.

Examiner Faul: Sustained.

Mr. Walter: Was Mr. H. A. Parker at that time Secretary of the East Chicago Chamber of Commerce.

The Witness: I do not think I understand just what time you are talking about. You started out with the question as to whether we were building a water tank on our line at some time or other, but you did not specify what time.

Mr. Walter: Mr. Feldes, did you, prior to December 1, 1931, and I think in November, probably in November, telephone (Tr. 2836), Mr. H. A. Parker, Secretary of the East Chicago Chamber of Commerce and request that organization to withdraw as petitioner from the petition referred to, calling attention to the fact that the city was interested in the expense of building the viaduct and making certain improvements and stating that the work would not go forward if the East Chicago Chamber of Commerce did not withdraw?

Mr. Davis: I object. (Tr. 2837.)

[fol. 1268] Examiner Faul: That relates to the same matter that you took up with the Commission some months ago? (Tr. 2837.)

Mr. Walter: I called it to the attention of the Commission prior to December 1, and on the suggestion of a representative of the Commission, referred it to Mr. Bonneville, head of the Bureau of Inquiry. I heard nothing further from it and desire to make this a matter of record that everybody might know why those had joined my present clients had ceased to stay with them and have withdrawn. I offer to prove by this witness that he is responsible for those two concerns.

Examiner Faul: In order to not unduly enlarge the record, I will sustain the objection. It appears that the matter is now before the Commission and will have to be handled in that way.

Mr. Walter: I want an exception and ask that the record be preserved in such form so that it can be presented to the Commission and ask the matter to be presented for consideration on both motions at the oral argument. That is all I have to ask Mr. Feldes.

Examiner Faul: You are excused. (Tr. 2838.)

Mr. Walter: As to the Peabody Coal Company, I offer to prove by a witness that a committee of three, representing the Chicago, Burlington & Quincy, the Indiana Harbor Belt, and the Illinois Central railroads, called on Mr. George Reed, vice president of the Peabody Coal Company,

and requested him to withdraw the name of the Illinois Coal Traffic Bureau as a petitioner, and that the name was withdrawn as a petitioner.

Mr. Davis: To that offer of proof I want to object, on the same grounds that have been heretofore urged. (Tr. 2840.)

Mr. Walter: Well, since Mr. Evans is here, vice president of the Indiana Harbor Belt, the questions that I would put to him would be the same as those put to the preceding [fol. 1269] witnesses, and so long as you are going to sustain the objection I will save an exception and let the record stand on it without going through the motions of putting him on the stand. (Tr. 2840.)

Examiner Faul: The ruling of the examiners will be the same.

Mr. Walter: Exception. Now we are ready to proceed, and if the respondents have finished their case, as I understand they have. Is that right?

Mr. Davis: Yes, I have rested.

Mr. Walter: Now, if the Examiners please, at the conclusion of the case made by the respondents, we desire to move for the dismissal and discontinuance of the investigation on the ground that the respondents have shown no basis for an order under Section 13. We will, however, assuming that the motion will be overruled, proceed to call some witnesses.

Examiner Faul: The record will show your motion, Mr. Walter, and the motion is overruled.

George H. Shafer, duly sworn, testified as follows:

Direct examination.

By Mr. Walter (Tr. 2841):

Am transportation rate expert of the Illinois Commerce Commission, and have been with that Commission since May, 1930. Prior thereto was with the International Harvester Company for something over 12 years, engaged in general traffic work, and immediately prior to that was with the Chicago & Alton Railroad in various operating and transportation work. (Tr. 2842.) Am familiar with the issues in this case.

Mr. Walter: Will you tell just how the case came before the Illinois Commerce Commission involving the so-called Lowrey rates?

[fol. 1270] Mr. Davis: Objected to as hearsay. (Tr. 2842).

Examiner Faul: The witness may answer, if he knows.

The Witness (continuing): This case came before the Illinois Commerce Commission through schedules filed to be effective April 30, 1927, proposing increases in the so-called Lowrey basis of rates from 2½ cents on one-line and two-line hauls to 3 and 3½ cents per hundred pounds, and from 3 cents per hundred on three-line hauls to 4 cents per hundred pounds. These schedules were suspended by the Illinois Commerce Commission from time to time until hearings were held jointly in connection with the Interstate Commerce Commission. The schedules filed grew out of the decision of the Interstate Commerce Commission in the Jones & Laughlin Steel case, which involved line-haul rates on iron and steel articles, reported in 96 I. C. C. 682, decided April 15, 1925. What I intend to give is what is set forth in the report of the Interstate Commerce Commission in this case regarding the origin of it, that it originally arose out of the Jones & Laughlin proceeding, which is likewise in the order of the Illinois Commission. (Tr. 2844.) At the time the hearing of the Illinois cases the only issue before the Illinois Commission was the question of the reasonableness of the proposed Lowrey rates as stated in the tariffs which were suspended by the Illinois Commission. No general investigation of rates was instituted by the Illinois Commission. (Tr. 2844.) During the pendency of those proceedings no petition was filed invoking the judgment of the Commission on any other of the switching rates in the Chicago district. (Tr. 2844.) The Commission found from the record, based on the volume of traffic moving in September, 1926, that 40.3 per cent of the total traffic moved interstate, the balance moving intra-[fol. 1271] state within Illinois and Indiana, 53 per cent being within the state of Illinois. (Tr. 2845.) The Commission found the average length of haul in miles for one line within Illinois was 14.7; on interstate traffic 15 miles; for two-line hauls intrastate the average was 15.9 miles; interstate 27.5 miles; for three-line hauls intrastate Illinois,

23.4 miles; and interstate 34.2. Those distances and percentages are identical with the distances and percentages shown in the report of the Interstate Commerce Commission. The decision of the Illinois Commerce Commission was rendered on the 26th day of August, 1931. The Illinois Commerce law under which the Illinois Commerce Commission gets its jurisdiction provides that parties have the right to file a petition for rehearing or reopening of cases within thirty days from the order of the Commission. (Tr. 2846), but no such petition was filed by any of the respondents. There is a provision in the statute for judicial review of the actions of the Illinois Commerce Commission, but no proceeding in any court, state or federal, was brought by the respondents or anyone else to review the action of the Illinois Commerce Commission in its findings in this case. (Tr. 2847.) The Commission found from the evidence before it, and being restricted to the schedules filed before the Commission, that the evidence did not justify any change in the then existing Lowrey rates. But the Commission permitted the carriers to increase the Chicago switching rates within the State of Illinois to the extent of Ex Parte 103 increases, namely, 10 per cent, which became effective Januray 11, 1932. (Tr. 2847.) This increase made the 2½-cent one- and two-line haul rates 2.75 cents, and the three-line haul rates roughly 3.3 cents. No [fol. 1272] other application has been made for an increase in the so-called exceptions to the Lowrey basis. The 10 per cent increase became effective January 11, 1932. (Tr. 2848.) Our Commission is a respondent in this proceeding before the Interstate Commerce Commission, and I am authorized to appear here on behalf of that Commission and state its views. (Tr. 2849.) The Illinois Commission, after following the procedure outlined in the statute, and after very careful and thorough study of the evidence introduced in the case, found that the carriers had not submitted evidence sufficient to justify the increases, and we take the position now that we should come here and defend the order of the Illinois Commerce Commission, and if that order is to be overthrown, it must be overthrown by competent evidence and on proper facts found by this Commission. (Tr. 2850.) We further feel that carriers should have exhausted their efforts within the state of Illinois, through petition to the Illinois Commerce Commission in

an effort to show changed condition after the close of the hearing, between then and the time of the order of the Commission, or to appeal to the state courts, as is usually the practice, rather than immediately after the order of the Commission was entered, file the 13th Section case. We feel that the decision and order of the Illinois Commerce Commission should be supported and found reasonable. (Tr. 2851.)

Mr. Walter: Mr. Shafer, what was the position of the Illinois Commerce Commission as to the so-called cost study made in 1927, applied against traffic moving in 1926, as to whether or not it should be relied on or whether the present record should be with all conditions as of today? (Tr. 2851.)

Mr. Davis: I object to that; it is only an opinion that he is asking for and not facts upon which any conclusion can [fol. 1273] be reached, and has no bearing on the issues in this case. (Tr. 2851.)

Examiner Faul: The Interstate Commerce Commission has overruled three motions for a new cost study, but if in the face of that Mr. Walter wants an answer to his question, the witness may answer.

The Witness. Naturally we feel the evidence as to cost taken in connection with 1927 traffic, the hearing having closed in 1928, should not be used as a basis for increasing rates in the state of Illinois, and our position is that the record today should reflect present-day conditions, and that an order for the future should be based upon those conditions, upon the facts as they are today. (Tr. 2852.)

Examination by Examiner Faul:

We have made no particular contention that conditions as they exist today are more normal or reflect a more normal situation than the conditions which existed at the time of the prior record. (Tr. 2852.) We are merely saying that the Interstate Commerce Commission should have the facts as they are today, whatever they are, and we want an order based upon conditions as they are today, whether normal or subnormal. If the Interstate Commerce Commission is to assume jurisdiction over intrastate rates that should be based upon evidence of facts as they exist now. As to whether the Interstate Commerce Commission would

be in a better position to decide this case upon a new cost study under present conditions, I do not know, because I do not know what a new record would disclose; but if the decision of the Commission was rendered within a reasonable time, I think it would. (Tr. 2854.) The Illinois Commerce Commission insists that before the laws of the state [fol. 1274] of Illinois are set aside entirely, we shall have opportunity to have the facts presented as they are at the time the action of the Interstate Commerce Commission is taken. (Tr. 2855.)

Cross-examination.

By Mr. Davis:

The record in this case closed before the Illinois Commerce Commission September 21, 1928, and the Commission rendered its decision therein immediately after the order of the Interstate Commerce Commission was entered, I believe on August 26, 1931. The case was pending before our Commission from September, 1928, to about August, 1931. The fact that most cases that are heard on the same record as between the State Commission and the Interstate Commerce Commission are decided at the same time, or substantially the same time, is the reason that the order of the Illinois Commerce Commission was not entered until the 26th day of August, 1931, which was approximately the same date that the Interstate Commerce Commission order was released. (Tr. 2856.) The Illinois Commerce Commission order was released August 26, 1931, and the Interstate Commerce Commission order a few days in advance of that.

The figures I have introduced or quoted were taken from the report of the Illinois Commerce Commission that was a part of the record in the Illinois case. The report of the Illinois Commission and the report of the Indiana Commission were not compiled on the same date. There was collaboration between the Illinois Commerce Commission and the Public Service Commission of Indiana at the time our report and its report were made. At the time of the 10 per cent advance under Ex Parte 103 we were in conference with the carriers as to whether the tariffs should [fol. 1275] be suspended carrying this 10 per cent advance. It is not a fact that the tariffs would have been suspended by the Illinois Commerce Commission if the carriers had

not agreed to apply that on the switching rates within Illinois. The carriers were told that there was a strong possibility that they would be. (Tr. 2859.) The rates as to which the carriers were advised would probably be suspended applied on certain low-grade commodities which had competition within the district, and the carriers objected to putting the increase on for fear it would prejudice this case, and we advised that we would not assume any responsibility as to whether it would prejudice the case or not, and as I stated, the 10 per cent increase was applied. (Tr. 2860.) I could not say that starting with Ex Parte 74 in 1920, there has not been a single instance since where the Interstate Commerce Commission differed from the Illinois Commission, that the carriers have not been obliged to get an order from the Interstate Commerce Commission either under Section 3 or Section 13 before they could increase the state rates; but I know that they were obliged to do that in Ex Parte 74; and I know of the recent coal rates within the State of Illinois; that matter was appealed to the Supreme Court of Illinois, which upheld the Commission, and then you filed your 13th Section case. (Tr. 2861.) The Interstate Commerce Commission partially overthrew the action of the Illinois Commission (Tr. 2861), and the Illinois Commission made an exception in the case of Ex Parte 103, the emergency charges, though I think there were others which I cannot recall. (Tr. 2862.) The class rates recently proposed are now under suspension on state traffic in the state of Illinois, though in effect on interstate [fol. 1276] traffic, though there is another question involved there besides the reasonableness. (Tr. 2862.) It is the question of abolishing the Illinois classification. As to Docket 17000, part 6, iron and steel rates prescribed by the Illinois Commerce Commission, the Illinois Commission found on that record, as in the case of the Chicago switching record, that the carriers had not justified the increases, and incidentally I understand they are going to accept the state basis on state traffic. The Illinois Commerce Commission did not accept the basis of the Interstate Commerce Commission's decision in that case.

Examination by Examiner Faul:

In referring to exceptions to the Lowrey basis that were not suspended, no exceptions were suspended because the

carriers did not propose or file schedules proposing to change any of the exceptions on Illinois intrastate traffic; and the only reason they were before your Commission was because you instituted a general investigation, which was broad enough to include the exceptions. (Tr. 2863.) The commodities excepted were various, such as slag, pig iron, grain, grain products, gravel, sand, stone in some instances, and many other commodities. In this instance, so far as the exceptions are concerned, the carriers are here trying to get the Interstate Commerce Commission to order in or require increases in rates which were never formally before the Illinois Commerce Commission or passed upon by it in the case which was heard on the same record as your case. The record shows that before the Interstate Commerce Commission all commodities were included, whereas the commodities before the Illinois Commission were limited in number. (Tr. 2864.)

Examination by Mr. H. J. Campbell:

[fol. 1277] The switching rates on grain were excepted from the Lowrey basis and the intrastate rates on grain were never before the Illinois Commerce Commission in this case now under attack, and no tariffs have ever been filed with the Illinois Commerce Commission seeking to increase the intrastate Illinois switching rates on grain within the Chicago district. (Tr. 2865.) It would be correct to say that all Lowrey rates were under suspension in Illinois. (Tr. 2865.)

K. E. THOLIN, duly sworn, testified as follows:

Direct examination.

By Mr. Walter:

Am supervising examiner of accounts for the Illinois Commerce Commission and have been with it 13 years. (Tr. 2866-2867.) Was a witness in this case in its earlier hearings, and participated in the so-called cost study conducted in the case. I was in close touch with the study as it was being conducted. I, and a force of men working under me, examined a great volume of the carriers' records

and their working papers, and we prepared one exhibit and also participated in the joint conferences on disputed questions; and since the record has been closed in the case I have been making a very exhaustive study of the record pertaining to the cost study in particular, and I think it is not representative as pertaining to all the traffic in the district. (Tr. 2867.)

Referring to page 6 of Exhibit 9 in this case, it shows that in the month of September, 1926, there were 1764 cars other than iron and steel which moved in one-line haul on the Chicago Junction Railway, which line was not included in the cost study. There were 14 cars of iron and steel in [fol. 1278] the same month on that railroad. Contrasting that movement with the minor shipments of some other carriers included in the cost study, I find that the Chicago, Burlington & Quincy was included, though only 30 cars moved in one-line haul, and the Chicago & North Western Railway was included although only 40 cars moved in one-line haul. The figures regarding the Chicago Junction Railway are taken from Exhibit 9, and the figures for the Burlington and the North Western were taken from Mr. Oliver's Exhibit 13. (Tr. 2869.) Several other of the carriers had less than 100 cars in the month of September in one-line hauls. The Chicago Junction Railway has been cited by the Interstate Commerce Commission in its final report I. C. C. 177, page 697, as not being representative of the traffic in the district. Assuming the correctness of that, I think the contrary is true, namely, that other traffic in the district cannot be considered as representative of the Chicago Junction Railway or of the district as a whole. (Tr. 2870.)

In the study cars as compared with other cars there seems to be such a divergence of characteristics between the two as to clearly indicate that the study is not representative. A summary of the data presented by carriers in their exhibits 7-A and 11-A indicates that for study cars the so-called present revenue per hundred pounds was 2.6 cents, while for the other cars it was exactly half of that, or 1.3 cents; also that proposed revenue per hundred pounds for the study cars, one-line, was 3 cents, while for other cars 1.7 cents. As to the average car haul in miles, the exhibits indicated that study cars traveled 13.12 miles on the average, while other cars traveled 6.49 miles—a

very great difference. (Tr. 2870-2871.) In comparing study cars, one-line, with other cars as to rate structures, [fol. 1279] dealing with tonnage expressed in percentages of total tonnage of one-line study cars and a separate computation for the other cars, I find, for example, that traffic moving in one-line hauls under the present "over Lowrey" and the proposed Lowrey—on the study cars, 54 per cent of the tonnage moved under these rates, while on other cars only about half of 1 per cent moved on that rate structure—.57 per cent. Also the rate structure under-Lowrey present and proposed under Lowrey, on study cars, 8.3 per cent of the tonnage was carried in study cars, while of the other cars 64 per cent were listed under that rate structure. So far as the rate structure is concerned, one cannot compare study cars with other cars, and when the two are combined I believe the study cars cannot be said to be representative of the composite. (Tr. 2871.) In the last group, where present rate schedule is below Lowrey, and the proposed Lowrey, wherein 8 per cent of the study cars were found, I made a further segregation of that item dealing with one group, which is the Illinois intrastate movement. (Tr. 2871.) Of that group there were 204 cars included in the study, representing 2 per cent of the tonnage, and the group contained 4681 cars of other non-study cars, representing 63.5 per cent of the tonnage. Comparing those in further detail, dealing first in totals, I found that the average haul for the 204 study cars was 12.51 miles; compared with 4.45 miles in the other group. (Tr. 2872.)

As to present revenue per car, the study group showed $13.99, as compared with $7.18 for the other. Proposed revenue study group, $29.95 per car, as compared with $7.69 for the other. I understand the other group, as shown by the carriers in their Exhibit 11-A, includes the Chicago Junction. The 204 cars in the study group included 56 cars of pig iron and 148 of miscellaneous com- [fol. 1280] modities, while out of the 4681 other cars 916 were packing house products, 23 fresh meat, 32 other animal products, 478 coke, 423 clay, gravel, sand and stone, and 2579 miscellaneous. I am not giving every item, but some of the more important ones. Carriers' Exhibit 7-A, page 11, shows total switching cost of the 204 cars studied average $13.97 per car. It is impossible to assume that the

916 packing house product non-study cars with the then present revenue of $3.41 per car would likely cost $13.97 to move, and taking average switching cost of all cars in the study, of $15.94, it seems still more impossible that that would be representative of the 916 packing house products cars, or for the whole group of 4681 where their present revenue was $7.18 and proposed only $7.69 per car. The record shows 11,950 one line haul cars in the study, of which 7,093 were Elgin, Joilet and Eastern movements and of this latter number, 6,854 moved outside the district, or 57 per cent of the total one line haul cars in the study actually moved outside the district. (Tr. 2873-2874.) As to two line and three line hauls we cannot determine from the record how many Elgin, Joilet & Eastern cars were involved in movements outside the district; but the record shows that in the 11,483 two line hauls, 1,264 were Elgin, Joilet and Eastern cars and of three line hauls, totaling 2,733, there were 750 Elgin, Joilet & Eastern movements. The terms "present" and "proposed" revenues that I have used are the terms that relate to present and proposed revenues as indicated in the carriers original exhibits 7-A and 11-A. As to separation of various engine hour costs between industries service and general service including transfer and classification, the record shows there should have been some adjustment of cost because of this claim made by the shippers and which was also conceded in part by the carriers. (Tr. 2874.) A rather substantial amount was conceded by [fol. 1281] the carriers. This involved the use of tracks owned by an industry as well as the use of some smaller engines in some cases in industry service. As to the cost study conducted in one week of 1927 being fairly applicable to traffic moving in 1926, there may be considerable doubt. The record shows many instances where rather abnormal costs were developed in the one week test period which were then applied to a large volume of cars moving in September 1926. One special illustration is the industry switching at Albert Schwill & Co., which the order of the Illinois Commerce Commission refers to. All of these things have not been pointed out before as I understand it. The point regarding the inclusion of the Elgin, Joliet & Eastern and taking one week of cost study and applying it to a month's traffic were pointed out. (Tr. 2875-2876.) The carriers presented a claim for additional cost to cover transportation

of locomotive fuel based on the difference of average engine hour cost for fuel as between 7 trunk lines and 8 industrial roads. This difference of $1.08 per engine hour was converted into the total claimed by carriers as representing cost of transportation of locomotive fuel used by trunk lines where the coal moved over their rails. (Tr. 2876.) This difference seems to be a fact that may depend upon many things and does not necessarily indicate exclusion of transportation costs on trunk lines. (Tr. 2876-2877.) Rock Island engine hour cost for fuel was $1.83 while Indiana Harbor Belt, Blue Island hump engine hour cost for fuel was only $1.31 and that cost is supposed to include transportation of locomotive fuel. (Tr. 2877.) Chicago & Northwestern average engine hour cost was $1.65, Chicago West Pullman & Southern, $1.58, Chicago, Burlington & Quincy, general yard cost, $1.51, Chicago, Milwaukee & St. Paul, Milwaukee division cost is $1.45, and Pennsylvania railroad, 55th and 59th st. yard cost is $1.44, all greater than [fol. 1282] the cost on the Indiana Harbor Belt, some greater than the Chicago West Pullman & Southern and one greater than the Chicago Short Line, which is $1.75. The basic cost of fuel is a very important factor in determining the difference between different railroads and principally the difference between different railroads. (Tr. 2878.) Cost of handling, heating values of various coals, quantities of coal consumed by various types of locomotives and amount of nonproductive engine time as related to net engine hours are also factors used as a basis for this unit cost. In view of these several factors, entering into the fuel cost per engine hour, I believe it is only a guess to say that any calculation based on those averages might represent the transportation cost. There were other things in the record, one of them dealing with certain errors in transfer cost which I think was of some importance. It may appear somewhat minor, but it is very difficult to say whether some of these things would result in a great change in the cost or only a minor change. To illustrate this, that engine making transfer runs would pull into a yard at 9 o'clock in the morning with a string of cars, recording their arrival time as 9 o'clock and after changing, their string of cars and picking up others, would depart for another yard showing on their reports that they departed also at 9 o'clock. Many cases like that were in the record and the effect cannot be told. Transfer costs must be overstated

by reason of that kind of record keeping, but possibly the classification cost has been understated; and to what extent that would affect the total, I do not think anyone can tell. We have found many cases of that kind on the Pennsylvania and Indiana Harbor Belt, as indicated in Exhibit 84, pages 204 and 193. I could not state what percentage of transfer runs were included, or were reported in that way. We could not examine all transfer runs as there are thou- [fol. 1283] sands of them in detailed working papers of the 15 carriers. There were a great number on those two roads where the time was shown in that way. There are several pages of them listed in Exhibit 83. One of the major items of cost included in the total was the so called car detention or maintenance and depreciation of freight cars. It is the one that dealt with the time element and was mentioned in the report. (Tr. 2879.) The carriers based their cost entirely on the element of time. It ought to be based somewhat, to some extent at least, to the element of use made of each car. The evidence showed these cars in the switching district apparently move but a short distance on the average every day and spend a great deal of their time standing on the tracks and in my opinion the time element is not a fair way to apportion this kind of expense to this traffic. There was some evidence of one or two railroad men indicating some study of damage to cars in the district but it was very meagre according to my recollection. There are several exceptions to 64¢ per day cost used by the carriers to cover repair costs; first, this does not give consideration to the time these cars spent upon the Belt, and industrial railroads, but does include repairs. This unit cost is then applied to Belt and industrial railroad movements and the third objection that it has been applied to private line cars. (Tr. 2880.) It might be proper to charge private line cars with some of this cost because car days of private line cars have been included in the division in determining the unit cost. It would have been more proper to exclude car days of the private line cars in arriving at the unit cost. The other important part of the car detention cost is the actual time charged to each of the cars in the study. A careful study of this time element and 2 things are to be pointed out; one is the very large adjustment pertaining principally to the Elgin, Joilet & Eastern, [fol. 1284] in connection with certain coke movements

where that line in compiling costs, charges the entire time of all coke shipments for each one of the cars that made one move or more during the month—the entire time for the whole month was charged against this particular traffic. I made an examination of the calculations of the Elgin, Joilet & Eastern in this matter and found many cases where these cars that were charged to the switching traffic for the 30 days during the month of September, actually made a great number of intra plant movements, at the Gary plant of the Illinois Steel Company and based upon these, in my study I found an average number of days per movement of 3.16 was the approximate average involved in the movements included in this case as against the average of 7.06 days which the Elgin, Joilet & Eastern charged to each of the cars moving in the switching district traffic. (Tr. 2881.) My particular examination on which I base the 3.16 days figure included only 43 cars. We examined the records of the company as to their moves in general dealing with the movements but as to this particular calculation, if that is what you mean, it dealt with 43 cars, making the movement from Gary to South Chicago. That however, does not represent the total movements we checked because many of the 43 cars made certain intraplant movements in Gary, 1 car, Elgin, Joilet & Eastern, No. 9350, hauled 2 loads of coke within the plant within the 2nd and the 5th and 4 moved within the plant between the 12th and the 17th. So that it made 6 moves in the plant and 5 moves during the month, between Gary and South Chicago, so while we examined these 43 moves between Gary and South Chicago, it included quite a number of moves within the plant. (Tr. 2882.)

Examiner Faul: We will adjourn at this time until 9:30 tomorrow morning, May 6, 1932. (Tr. 2883.)

[fol. 1285] Hearing reconvened at Chicago, Illinois, May 6, 1932.

K. E. Tholin resumed the stand.

Direct examination (continued):

By Mr. Walter:

Car detention on the Elgin, Joliet & Eastern as far as the very heavy coke movement was concerned was figured under

a method entirely different from that used in general by the carriers; practically the entire month's time of most of the coke cars on the Elgin, Joliet & Eastern, was charged to intradistrict traffic; there were 922 cars for which the entire month's time was charged to intra district traffic. (Tr. 2884.) These same cars handled besides the 3,955 carloads intradistrict traffic, 4,990 coke movements within the Gary plant of the Illinois Steel Company (Tr. 2884), and no allowance was made for the time they spent in the Illinois Steel Company's plant. My best judgment of the excess cost included in the one line haul car detention for all carriers based on this error of the Elgin, Joliet & Eastern, approximates $10,000.00. Referring to car detention on the other carriers we made an examination of a great many cars and found many various kinds of errors. A good deal of idle time was included, that the formula used by the carriers did not provide for, and there was time of private cars as being on the tracks of the carriers when they were actually on the tracks of the owning companies. (Tr. 2885.) There was time included for reconsigned cars preceding the time of actual reconsignment which belonged to the previous movement. Also, they included time for cars while on repair tracks. There were many other adjustments such as clerical errors. These cars that were examined covered most of the roads in the state and as a [fol. 1286] result of this study which we made was covered by my testimony and by Exhibit No. 96 in this case, and it is my opinion that the car detention time of other carriers included in the cost study showed an excess of approximately 10 to 15 per cent. (Tr. 2885.) There is evidence in the record that quite a little time was lost by switching engines waiting for clearance over main line tracks as well as evidence regarding demurrage and weighing. These items may not be material but some attempt should have been made to allocate cars to the intradistrict switching because of them and share the cost of the operating expense to through freight or passenger movements and also to give proper credit for demurrage and weigh revenue to this intradistrict switching, where the cost of performing this service is included in the cost study. The cost per hundred pounds originally submitted in Exhibit 7-A for one line hauls was 1.85 cents, but the carriers by their adjustment raised this to 1.93 cents. The shippers in

their claims reduced these costs to 1.54 cents. The Interstate Commerce Commission in its final report indicated that if full effect were given to the modification submitted by both carriers and shippers of any figures in the originally submitted cost, it would be 2.2 mills per hundred pounds for the average one line haul for 13.19 miles.

Applying that reduction of 2.2 mills to one line hauls, would reduce the original cost to the carriers to 1.63 cents per hundred pounds. Carriers original cost for 2 line hauls was 2.25 cents per hundred pounds, which they raised to 2.38 cents by their added cost and which shippers claim should be but 1.91 cents per hundred pounds. The Interstate Commerce Commission, by the process of averaging indicates that on 2 line hauls, there should be a reduction of 2.2 mills from the original cost of 2.25 cents, making the adjusted cost 2.03 cents per hundred pounds. For 3 line hauls, the carriers original cost was 2.52 cents per hun-
[fol. 1287] dred pounds, which they raised to 2.87 cents. The shippers claimed it should be 2.20 cents and with an adjustment (Tr. 2887) based on the average shown in the Interstate Commerce Commission report, of an increase of .3 mills, the adjusted cost would be 2.55 cents per hundred pounds. (Tr. 2887-2888.) This is possibly more or less an arbitrary rule of -thumb- method for determining the reasonableness of cost. It is simply an averaging process. The operating ratio used by the carriers was based entirely upon the operating ratio of the entire railroad system of the United States. This ratio as actually worked out from reports of the various carriers was somewhat greater than the operating ratio which the carriers finally granted would be a proper one to produce a 5.75 per cent rate of return. The carriers claimed that a ratio of 67.4 per cent would produce the 5.75 per cent return. (Tr. 2888.) This was a small error on their part and the ratio should have been 69.2 per cent. The only evidence of operating ratio offered by the carriers dealt with the country as a whole and it is my opinion that they should have introduced density of traffic comparing the Chicago Switching District with the country as a whole, instead of the territory immediately outlying from the Chicago District. (Tr. 2889.) The evidence introduced by the shippers dealing with operating expense would compare the data for the district and the country as a whole. (Tr. 2889.) The evidence intro-

duced by carriers on this point is really of no weight because the comparison is in error.

Two statements appear in the Interstate Commerce Commisson's report regarding high taxes within the district, the difficult operating conditions due to congestion and that this intradistrict switching is somewhat less than 5 per cent of all switching largely made up of industrial [fol. 1288] switching, admittedly the most expensive switching service and there is also a reference in the record, page 132, Exhibit 83, to the effect that the yards of the carriers are not laid out especially for the switching service. (Tr. 2890.) These things tend to indicate that intradistrict switching may be somewhat more costly than other operations but I am not testifying that it is more costly, I am simply referring to what the records show here, (Tr. 2891) and if this traffic is more costly than other operations, the operating ratio may well be higher in such cases than where the operating cost is lower. (Tr. 2891.)

If a shipment in the district cost $40.00 per car, and the amount needed for return on investment was $10.00 per car, we would have an operating ratio of 80 per cent. If the operating cost was increased to $90.00 per car, it would have little effect upon the amount required for the return on the car and in that instance, the operating ratio is 90 per cent. (Tr. 2891.) This was referred to by Mr. Oliver in his testimony and included in the composite exhibits of the carriers and shippers, No. 83, page 129. In addition to these factors, there is considerable evidence that much of the industry track in the district is owned by the shippers and evidence concerning operating ratios on certain switching roads within the district would actually carry a good deal of this particular traffic under review in this proceeding. These operating ratios are considerably higher than those claimed by the carriers and still the switching roads are rather profitable. (Tr. 2892.) Carriers costs have been determined on the basis of certain cars so called study cars. There is quite a disparity between the characteristics of these cars especially on the one line hauls in making a comparison of cost with revenues in a case like this, and I believe it is entirely improper to compare the revenue of all cars with the cost

of only some of them. If comparison is made, it should [fol. 1289] be entirely of study cars, comparing the costs as they are developed with the revenues of the same movement. The Interstate Commerce Commission indicates that it would be desirable to eliminate from a comparison of this kind the effect of the Elgin, Joliet & Eastern. (Tr. 2893.) It is my opinion that it is impossible to eliminate the Elgin, Joliet & Eastern from the figures we have in evidence. The Interstate Commerce Commission indicates that the traffic moving interstate and intrastate Indiana on rates over and above the present and proposed Lowrey basis consists of traffic over that road.

I have attempted to determine how cars would fall in the description of interstate and intrastate movements in Indiana over and above the present and proposed Lowrey basis and the result of that study indicates that for one line hauls, we would have 428 cars of the Elgin, Joliet & Eastern, although the record definitely shows there are 7,093 Elgin, Joliet & Eastern cars in the study. On two line hauls, an elimination of these particular described cars would throw out 1,496, although the record shows there were only 1,264 Elgin, Joliet & Eastern cars in the study. (Tr. 2893.) On three line hauls this process would eliminate 1,201 cars supposed to be Elgin, Joliet & Eastern, though the record shows only 730 Elgin, Joliet & Eastern cars, in the study. These are all cars where the rates both present and proposed are above the Lowrey basis. (Tr. 2894.) Exhibit 7-A, page 4 shows movement of 3,372 cars of coke where present revenue is indicated as 3 cents, being above the present Lowrey basis, but the proposed basis is also indicated as 3 cents which is the Lowrey basis and as to these, the Elgin, Joliet & Eastern one line haul cars did not move on rates both present and proposed over the Lowrey basis. (Tr. 2894.) While these 3,372 cars are not shown on that exhibit to be Elgin, Joliet & Eastern [fol. 1290] cars they are definitely tied up to that road on page 188 of Exhibit 84 as being Elgin, Joliet & Eastern coke movements from Gary to South Chicago. (Tr. 2894.) As a basis for study of the Illinois rates, before the Interstate Commerce Commission makes use of these cost figures in determining Illinois rates, I believe it is entirely unfair to use the table or process on sheet 21 of the mimeographed copy of the final order. (Tr. 2894.) It is a table com-

paring rates, the weight, average revenue, the operating expense and operating ratio. (Tr. 2894.) The table indicates average revenue for one line haul as 2.04 cents per hundred pounds based on present rates. The average revenue of the study cars is 2.59 cents and the Interstate Commerce Commission figures in the table reduce that revenue 55/100 of a cent in the average revenue per hundred pounds for one line cars. Analyzing this reduction which amounts to 21 per cent, I found that .47 cents, due to the inclusion of other nonstudy cars in determining the average and .08 cents, due to the attempt to eliminate the Elgin, Joliet & Eastern. (Tr. 2895.) The table in the order of the Interstate Commerce Commission indicates average revenue of 2.37 cents on the basis of present rates as compared with 2.68 cents actual present revenue of all cars in the study. A reduction of .31 cents or 12 per cent. .07 cents of this results from including the other cars and .24 cent results from attempting to eliminate the Elgin, Joliet and Eastern. On three line hauls the Interstate Commerce Commission report shows average revenue per hundred pounds, based on present rates of 2.89 cents which compares with 3.58 cents of the study cars or a reduction of .69 cents per hundred pounds or 19 per cent. One tenth of a cent of this is due to conclusion of the cars and .59 cents is due to an attempt to eliminate the Elgin, Joliet & Eastern. (Tr. 2895.)

[fol. 1291] In carrier's exhibit 97, they compare the cost of study cars with the revenue of study cars. It is my contention that only study cars should be used for any such comparison.

The present revenue per hundred pounds on one line haul cars is 2.59 cents, compared with the adjusted cost of 1.63 cents indicating an operating ratio of 62.93 per cent, based on the average reductions or increases found in the Interstate Commerce Commission's report or order. (Tr. 2896.) The proposed revenue of carriers for these same movements is 3 cents, indicating an operating ratio based on the proposed rates of 54.33 per cent. For two line hauls, present revenue per hundred pounds is 2.68 cents, compared with adjusted cost of 2.03 cents, indicated an operating ratio of 75.75 per cent. Comparing these adjusted costs with proposed revenue indicated in carriers' exhibits, of 3.69 cents shows operating ratio of 55.01 per cent; on

three line hauls present revenue, 3.58 cents per hundred pounds and comparing the adjusted cost of 2.55 cents with these revenues shows operating ratio of 71.23 per cent the proposed revenues would be 4.33 cents which compared with adjusted cost of 2.55 cents shows operating ratio of 58.89 per cent. All these operating ratios are below the operating ratio claimed by the shippers as proper, based on studies of the 9 switching roads within the district, which was 76.8 per cent. The one line operating ratio based on present revenues would be below the ratio acceptable to the carriers, which they said would be something below 66.67 per cent without exactly stating the figure; but the operating ratio here is 62.93 per cent, based on present revenues for one line hauls. (Tr. 2897.)

In speaking of present revenues, I mean the revenues which were in effect at that time. In every case referring to present revenues, it was the revenue back in 1928 and 1927 when these exhibits were prepared and where I have [fol. 1292] referred to proposed revenues, it means the revenues proposed as indicated in the carriers' Exhibits 7-A and 11-A. The increase from 2½ cents to 3 cents for one line haul is 20 per cent and from 2½ cents to 3½ cents, is a 40 per cent increase and there has been a ten per cent increase in the interdistrict Illinois and interdistrict Indiana rates. Those increases would still further reduce the ratios which I have just referred to. (Tr. 2898.)

Exhibit 105 shows percentage of interstate traffic to total traffic, considerably greater for the periods in November, 1931 and January 1932, than in the month of September, 1926 at which time the percentage of interstate traffic was 40.3 per cent, (Tr. 2898) and Exhibit 105 shows a reduction in percentage of interstate traffic in January, 1932 compared with November, 1931. (Tr. 2899.) It is rather difficult to definitely state the reason for a change of this kind simply by looking at the total figures. There may be considerable difference in commodities and there may be various causes which would affect the shipment of interstate or intrastate traffic. Referring to Exhibit 110, to the extent that that diversion of traffic exists, of course, it will have an effect upon whatever figures are set up on that traffic. I am not qualified to say based on Exhibit 110 that it was or was not a diversion from interstate to intrastate traffic. (Tr. 2899.) If there were no elements

involved, any traffic diverting from interstate to state would have a direct effect and change the percentages to the extent of such diversion. (Tr. 2900.) But in a figure of this kind, there are so many things involved which may affect the movement of traffic that to pin it on a particular thing is just about impossible unless a very careful analysis is made of every fact. From a study of some of these commodities, I find there are a great many of them that have moved in various proportions and the commodities [fol. 1293] moving in interstate traffic do not seem to be the same ones moving in intrastate traffic. But even with those changes shown on page 1, the percentage of interstate traffic was substantially greater than what it was in the former hearing; very much greater. In making these comments regarding the record, I do not want to be understood as being interested in any way or particular except in defense of the Illinois Commerce Commission's order. (Tr. 2900.)

I assisted in gathering data for the preparation of the Illinois Commerce Commission's order, and personally feel that is was a fair order and all elements considered, and I made no attempt to favor any party, carriers or shippers; but have only attempted to look at all facts placed before the Commission, and to the extent that I participated with the Commission, it was my purpose, and it is my conclusion, that its order was fair. (Tr. 2901.) In my investigation made since this 13th Section proceeding was begun, it was not my purpose to undertake to sustain the Illinois Commission's order at any hazard. I have never felt that way in connection with any work on this case, whether now or in the preceding work, that we are bound by the record as it is, and I made an attempt to determine the basis and to determine the facts as they are shown there in the clearest way possible. (Tr. 2901.)

Mr. Davis: I want now to move that all of Mr. Tholin's testimony be stricken out except what he said in regard to Exhibit 105, because it is a reiteration of Exhibit 83 and a reiteration of the argument made by the Illinois Commission, the Indiana Commission, and shippers, in Docket 19610, and a reiteration of points raised in the motion or petition to have a rehearing and in the petition asking to have the tariffs suspended, all of which were [fol. 1294] denied and that is the basis of my asking his

evidence and everything he said be excluded except as to Exhibit 105.

Examiner Faul: Motion overruled.

Mr. Walter: That is all. (Tr. 2903.)

Cross-examination.

By Mr. Davis:

I do not believe all figures that I quoted regarding single-line cars moving particularly on the Chicago Junction appear in Exhibit 83; some of them are from Exhibit 13 and Exhibit 9. I think all the figures pertaining to that question were in the record. (Tr. 2903.) We contended in the original hearing that cars moving in single-line hauls on the Chicago Junction should have been included. All the 1674 cars moving on the Chicago Junction, the average car haul in miles, was 1.6 miles, and the average ton mile haul 2.3. Those were the averages for the 1764 cars other than iron and steel, and only 14 cars of the latter, and there was a little longer average haul on those (Tr. 2904) single-line on the Chicago Junction, being 2.1 miles. (Tr. 2905.) The 64-cent per car charge was also contested in Exhibit 83, and in the oral argument before the Interstate Commerce Commission; and that is generally true as to what I said regarding demurrage, the clearance of main tracks for passenger trains and the delaying of freight trains; but I am particularly here interested in the Illinois rates. It is my opinion that the Interstate Commerce Commission was in error in making its decision. I presume each of us think we are right, and I also think I am right. I think the Interstate Commerce Commission should have used my conclusion and my figures instead of the figures they did use; that is my contention. (Tr. 2905-2906.)

[fol. 1295.] Of all of these figures I quoted regarding costs, both the carriers' original figures, their adjusted figures, and the shippers' adjusted figures, and the average on the so-called rule-of-thumb method, in every instance the cost of the two-line haul is quoted higher than the cost of the one-line haul. I cannot say it necessarily would cost more for a two-line haul than for a single-line haul. There may be some very short and there may be some very long two-

line hauls, and the same way for a one-line haul. Some of those roads cover a good deal of territory.

In my conference with the Illinois Commission and my recommendations from my investigation in regard to this case, I do not believe there was ever a discussion or a reference from the cost study or otherwise as to a direct difference between a single-line cost and the two-line cost. (Tr. 2907.) The Illinois Commission had before it the shippers' figures as to single-line and two-line haul costs. I would not say that the figures showed a difference, because in our opinion the figures were so unreliable we could not tell definitely whether one was right or one was wrong or all of them were wrong; and in saying the figures were unreliable I have reference to all of them, whether carriers or shippers. So far as shippers' figures were concerned, concerning which you speak, the record shows that they were not handicapped in obtaining a figure and producing figures, and I have attempted not to be prejudiced in favor of one side or the other, shippers or carriers. I have not said that shippers' figures are more reliable than the carriers'. (Tr. 2908.) In going down the list of various items, taking single-line hauls I find that was an additional [fol. 1296] cost claimed, amounting to $5501.14, made by the carriers, to which the shippers agreed, and I find $1469.63 of other statements in costs to which both parties agreed. In reviewing these items I felt they probably were somewhere near the approximate figures, although getting down to the item of transportation of locomotive fuel, where the carriers claimed on one-line haul $1862.90 additional cost, I find that the shippers agreed with the carriers on that item. Exhibit 5 in its entirety eliminated the element of profit from the item they gave you in their item of allocated profit. On that point we disagreed with both carriers and shippers, because I do not think the calculation of cost on transportation of locomotive fuel has any value at all. There are so many uncertainties in it, so I did not agree with either party on that. As to engine-hour costs of industrial switching, I find the shippers' reduction to be $9447.61 and the carriers agreed to $4664.01 of that, or just about half. (Tr. 2909.) My recollection of that study was that the shippers' claimed adjustment appeared to be somewhat excessive. It did not seem that they had a sound basis for everything in their calculation, and as I recall

now, I was inclined to accept the carriers' figures for the adjustment.

As to car detention the shippers claimed $21,167.43 reduction. The carriers admitted nothing. On one-line hauls I believe that about $10,000.00 should be cut out on account of the Elgin, Joliet & Eastern. The shippers did not go into the fact of time to any great extent to establish proof as to excess time, although Mr. Oliver did comment about it, so the item was not covered by shippers. The other element of adjustment on the other roads was not covered by shippers either. As to the formula used by shippers, [fol. 1297] there is a good deal of question as to what a right formula is, as no one has developed any very accurate formula.

Most of these date back quite a few years. I think the general type of formula used by the shippers is better than the method used by the carriers. It involves some estimates. I do not recall just how many, but my opinion of it was that these estimates, these individual estimates, were carefully made and were a nearer approach to the proper answer than to take over all estimates of the element of time, which was the sole factor in determining the costs of repairs and depreciation of cars; so as a general proposition, I thought that the result as shown by the shippers had some merit. (Tr. 2910-2911.) The carriers of course would not admit anything.

Exhibit 83 shows many cases under the title of Illinois Commerce Commission position, the words "No comment." In other places there are some comments. Where the words "No comment" appear it meant that we felt the subject matter was clearly brought out by the statement of the two parties as to the position of carriers and the shippers; and we thought it unnecessary for us to take up space and go into the same matter again. That is what the words "No comment" mean in this exhibit. (Tr. 2911.)

In Exhibit 83, where we made answer other than "No comment," I cannot say that such answers favored the shippers' side of the case. I will have to go through it and see what our answers or statements were, but before looking I will say there was no intention to favor either party. The exhibit will show what the comments were, but the facts are a different matter. We tried to study and set forth the facts, that was what the exhibit was sup-

posed to do; it was an attempt for all parties to get to-[fol. 1298] gether and iron out the difficulties that came up. The Commission was to draw conclusions from the exhibit. (Tr. 2912.)

I cannot recall that the Illinois Commerce Commission at any time objected to the exclusion of the Elgin, Joliet & Eastern in the cost study, when the carriers offered either to exclude it in toto or have it in in toto. (Tr. 2913.) I wish I knew what the inclusion of the Elgin, Joliet & Eastern in the cost study was. There is no way to determine whether its inclusion increased or reduced one-line or two- or three-line hauls. (Tr. 2914.) As to whether the Illinois Commerce Commission wanted the Elgin, Joliet & Eastern eliminated, when I was working on the case, I learned that the railroads had prepared some figures showing the effect of excluding the Elgin, Joliet & Eastern and I attempted to get them, but was refused, and it dragged along for a week or two, and I was finally told that the papers were destroyed. (Tr. 2915.) If the Elgin, Joliet & Eastern cost study cars had been eliminated it would have required the elimination of the elements performed by other carriers on the same cars as to two- and three-line hauls. (Tr. 2916.)

Examiner Faul: I wonder if you are not wasting time.

Mr. Walter: I don't think so.

Mr. Davis: I think so.

Mr. Walter: We hope the Commission will conclude, before it gets through, that the Elgin, Joliet & Eastern has destroyed the value of the testimony of the cost study.

Examiner Faul: This case is based on 15 so-called representative lines on a cost study made over those lines, which were supposed to be representative. It is true in the early stages of the proceeding some contention was made as to the Elgin, Joliet & Eastern and the Chicago [fol. 1299] Junction, but the fact remains our cost study is based on these 15 roads and we are not able now to change these cost figures which were developed from that cost study made on those 15 roads. (Tr. 2916.)

The Witness: The matter of operating ratio, and involving those things you speak of, taxes and investment, were discussed and set forth both in the shippers' and carriers' position in Exhibit 83; and the same is true in regard to industrial tracks that were owned by the carriers

and those owned by the shippers; whatever it was was involved, the movement of cars and the associated revenues and costs pertaining to them, and there has not been any segregation of movement or any statistics according to localities, except such as might be indicated on the one-line where the moves were locally over a particular railroad. (Tr. 2917.) The Commission's order, of course, was dealing with the rate structure as it was at the time of the writing of the order, and the statistics that I said before were compiled were in the total for the district and not segregated. (Tr. 2918.) As to trying to find out how much it cost to handle single-line movements, the carriers were the ones who prepared the cost study, and they were probably doing that so far as the Commission was concerned, but we were checking data prepared by the carriers. (Tr. 2918-2919.) We made no attempt to divide the carriers' data further than they divided it themselves, and the cost figures covered one-, two- and three-line hauls. (Tr. 2919.)

Redirect examination.

By Mr. Walter:

There was nothing in the record as to the value of the carriers' property as between that used in intradistrict service and that used in other service. There was no sep- [fol. 1300] aration between the switching intrastate and switching interstate as to valuation. (Tr. 2919.) I am here at the direction of the Illinois Commerce Commission to support our order. Our order in some respects differs from the Interstate Commerce Commission's order, and in defending our own we may feel the Interstate Commerce Commission's order may not be correct; but of course we are not concerned with interstate rates and there may be some variation in the facts in the intrastate rates that might interest the Interstate Commerce Commission.

Examiner Faul: At this point it might be well to state that this was a cooperative case, and the three commissions, Interstate, Illinois Commerce, and Indiana Commission, attempted to cooperate in the case. I just want to make that statement at this time.

Mr. Davis: They did cooperate in taking evidence and listening to oral argument; both commissions were represented on the bench in the case.

Mr. H. J. Campbell: That is subject to the further statement that their cooperation did not cover issues which were not before the state commissions; that is, the exceptions were never before them; the exceptions to the rates which were included as exceptions to the Lowrey basis were never before the Illinois Commerce Commission or the Public Service Commission of Indiana, so there could not have been cooperation as to that. (Tr. 2920.)

Examiner Faul: I think the record is clear that the Indiana and Illinois state commissions had only certain commodities under suspension, and those were the only commodities they had under consideration.

Mr. Shafer: And any order beyond those would be un-
[fol. 1301] lawful, illegal orders.

Examiner Faul: I think the record is clear on that. (Tr. 2921.)

The Witness (continuing): I testified that these particular figures of the carriers, and the carriers' adjusted and shippers' adjusted figures, and this other average cost, show higher for a two-line haul than for a one-line haul. I don't know that I reached any conclusion except that the figures themselves in one case were larger than in the other case. (Tr. 2921.) I did not testify this morning that as a result of an exhaustive study the figures in connection with the two-line haul cost exceeded the one-line. What I meant to say was, dealing for example with carriers' original figures in Exhibit 7-A, that their exhibit shows cost of a two-line haul was 2.25 cents, which is greater than the figure for a one-line haul of 1.85 cents. That is the only character of testimony that I gave this morning. I also gave this morning figures of shippers indicating 1.54 cents as against 1.91 cents, but I decided on this first instance as an illustration only. The same situation exists between the one- and two-line hauls for both the carriers' original cost in Exhibit 7-A, their modified cost based on Exhibit 83, and corrections, and shippers' modified costs based on Exhibit 83 and corrections, and the average of the two as computed by the Interstate Commerce Commission, giving consideration to all of the claims of shippers and carriers. (Tr. 2922.) I do not believe it is a fair deduction from my testimony that that would show there should be a difference in the one-line rate and the two-line rate, because I have not taken the position that I know what the

costs are for either the one- or the two-line hauls, because I believe these records are so incomplete you cannot rea- [fol. 1302] sonably tell without making a great many guesses as to just what a reasonable cost might be, or whether the two-line would then be greater or less or the same, I would not attempt to say. The only estimates and approximations I have indulged in are those I have mentioned right here. I have not here used any formula. I am simply quoting the carriers' original and revised figures, and the shippers' claims, and the adjustment which the Interstate Commerce Commission indicated might be of some consideration; at least they included it in their order, and I have simply made computations from those figures.

I did not use a different method in arriving at my engine-hour costs. (Tr. 2923.) I have not here testified to any claimed correction of any of these figures. I pointed out there are claims on both sides, carriers and shippers, of various amounts, but I have not here testified to what I consider the proper adjustment of those claims, because I did not believe the record contained sufficient data on which to come to a decision. The record shows that two-line hauls are longer on the average than one-line hauls on the average. These averages are for the 15 carriers, and the record is based on those 15 carriers for one week. (Tr. 2924.) There is an interchange of the loaded car in the two-line haul, and there are many of those one-line hauls that may have one or two interchanges of the empty car. As a cost expert I would not say it is a fair assumption that a two-line haul would cost more than a one-line haul. I have not made a careful study; in the abstract you might assume it would, but a one-line haul might travel through 6 base yards on one railroad, while a two-line haul might not travel through more than two; and the two-line haul might travel through 6 base yards. It would appear that [fol. 1303] a two-line haul might be more costly than a one-line haul, but there is no different rule one way or the other. Looking at the rate structure in use all these years, where the same rate has been applied, I would naturally assume costs entered into the rate structure, and it might have been considered at one time that there was not any more cost; I don't know what was back of the rate structure that has been in use so many years.

Leaving the cost study out entirely, and everything else being equal, including distance, and with an interchange adding some distance, and costs on each of the railroads being equal, I would say it would cost more to handle a two-line haul than a one-line haul. (Tr. 2926.) But in view of the various costs shown by various carriers, and the varying amounts for each of the classes of service, classification and transfer and industrial service, it would be vary problematical as to whether everything else would be on the same basis. (Tr. 2926.) As to my study of the case, indicating that the cost for a two-line haul was different than for one-line, I believe I have answered that, in that I have said I cannot determine from this record what the true costs are. I have indicated that the costs as displayed by carriers and by shippers, and this average I have spoken of, in each instance are greater on two-line than on one-line hauls. As to the one-line rate being too high, or the two-line rate too low, it appears from these figures I quoted that there is a favorable operating ratio indicated by the present rates on the one-line haul, and likely a great possibility that the one-line haul rates are too high, as the figures I quoted indicate an operating ratio of 62.93 per cent on the so-called present rate, meaning the rate in existence [fol. 1304] in 1928. (Tr. 2927.) And my answer in regard to the cost of a three-line haul would be the same as in regard to one- and two-line hauls as to the comparison of the costs. (Tr. 2927-2928.) I am principally concerned with the cost study. Am connected with the accounting department of the Illinois Commerce Commission and not with the rate department, but am somewhat familiar with the fact that rates do not always follow costs in their entirety, and there may be circumstances in the district where one- and two-line haul rates ought to be the same. I believe the question of traffic studies and rates that will move the traffic, and possibly costs, in my opinion should be given very careful consideration. I am speaking of rates in the district, but I would not comment as to what the rate department might consider as proper in fixing the rates. (Tr. 2928.)

Mr. Shafer: We are getting more and more—I think it is a fair observation from the decisions of the Commission—against a higher rate for the two-line than one-line in making rates, whether they be by one-line or two-lines.

Examiner Faul: Would you add to that, in connection with line-haul movements?

Mr. Shafer: Transportation of any sort; I do not regard the question of one-line or two-line being any different, whether it is 5 miles or 500; the rates have to be measured so the carriers can live and the traffic move. (Tr. 2929.)

C. R. LIVINGHOUSE, sworn and testified as follows:

Direct examination.

By Mr. Hufsmith:

[fol. 1305] Am examiner in chief of traffic bureau for the Public Service Commission of Indiana, and have been for about 5 years. (Tr. 2929.) During that time have been the head of the tariff department of the rail service, as well as tariff department of the utility department of the Commission. All tariffs applying to all railroads and public utilities are under the direct supervision of my office. Prior to my connection with the Commission I had railroad experience from about 1907 to 1913, industrial traffic experience from 1913 to 1927 or 1928. My employment by the carriers was not in the operating department, but in contact with the operating department. I am familiar with the present proceedings and the rates involved. I followed this entire proceeding outside of the first hearing, I believe in May, 1928. (Tr. 2930.) Outside of the first hearing I participated in the joint hearing held in this proceeding originally, with the Interstate Commerce Commission and the Illinois Commerce Commission, as the examiner for the Indiana Commission. (Tr. 2930.) The rates involved in the original proceeding as heard by the Indiana Commission were the rates we suspended. We suspended only the rates in tariffs filed by the carriers, none of which included any of the exceptions. There was not at that time, nor has there since been, any hearing before the Indiana Commission with reference to the exceptions just referred to, and the order prepared by the Indiana Commission as a result of the hearings did not pertain to the exceptions mentioned. Its order dealt only with the tariffs before that Commission. As I recall, the Elgin, Joilet & Eastern was not a party to the tariffs under suspension (Tr. 2931), and

their line-haul rates were not involved in the proceeding because they were outside of the district. The Indiana Commission entered its order pursuant to that hearing August [fol. 1306] 26, 1931. The Indiana code makes provision for applications for the judicial review of administrative orders of the Indiana Commission, and for the filing of a petition for rehearing. No petition for rehearing has ever been filed. There is a provision in the Indiana code for an appeal from an order of the Commission, which our Supreme Court passed upon, the 27th appeal provision. (Tr. 2932.) If such an appeal had been taken I would know of that fact, because in appeals the requirement is that the record heard by the examiner be forwarded to the upper court. To my knowledge no such appeal was taken. To my knowledge the carriers have not taken any action before the Indiana Commission nor the Indiana courts to test the correctness of the Commission's order pursuant to the joint hearing.

About 6 per cent of the traffic moving in the Chicago switching district moves in Indiana; that is purely Indiana intrastate. I represent and am authorized to speak in this hearing for the Public Service Commission of Indiana (Tr. 2933), which promulgated the order for the Indiana rates intrastate, pursuant to the hearing that we mentioned. The Indiana Commission, by approval of its order, expressed its opinion that the records so far as the Indiana rates were concerned, did not justify the proposed increases, and ordered them cancelled. That is still its opinion. It has not been challenged in any state court. Have had several cases in my department in which (Tr. 2934) the carriers prepared and offered as exhibits, cost studies which, under my supervision, have been analyzed by cost accountants of the Commission; and the cost accounting department has prepared certain exhibits in the state of Indiana.

In my judgment there is nothing constant about the cost [fol. 1307] of switching movements within a given switching district. In so far as they came to us in our proceedings and hearings I have had occasion to observe and ascertain the changes from time to time that have taken place in the various switching districts in Indiana.

Mr. Hufsmith: In your judgment, Mr. Livinghouse, I will ask you if a rate for an intrastate switching movement within a switching district, predicated and prepared upon

cost figures in a test period of 1927 or 1928, and analyzed, would be accepted by you as the cost (Tr. 2935) and the fair rate for the movements of that traffic in 1931 or at the present time?

Mr. Davis: I object to that.

Examiner Faul: The witness may answer.

The Witness (continuing): I don't think it will reflect the true situation, and it would not have any bearing or weight as far as reflecting conditions in 1931 or 1932 are concerned. That statement is based on changed conditions, upon changes in volume of traffic, changes in the cost of labor and operation and other items that might be different at any different time. In the Evansville switching case the cost study was prepared upon 1927 and 1928 figures as against the 1931 figures, and in a general way it is my recollection that the carriers in their study before the special master, developed costs somewhere in excess of $7.00 (Tr. 2936), and the accountants for the Commission, taking the same figures, brought the costs down to somewhere in the neighborhood of $4.00, and the master did not take the original cost produced by the carrier on account of the lapse of time, so a new study was made out which those figures developed. The cost figures in 1931 were somewhere around $7.50 in the neighborhood of $7.50. The figures referred to were in connection with the Chicago & Eastern [fol. 1308] Illinois Railroad at Evansville, and the figures in 1927 and 1928 were lower than the 1931 cost study, according to the carriers, but not according to the Commission's figures. The carriers' figures in 1931 showed higher than what they claimed in 1928, and the Commission made no figures in 1931 except to refigure the cost study. (Tr. 2937.) The Commission shaved down the carriers' figures in 1931 the same as they did in 1927 and 1928. In the shaving process in 1927 and 1928 the cost reached was some $7.00, and the cost submitted to the Master in 1931 was some $4.00-plus. The Chicago & Eastern Illinois cost figures in 1928 at Evansville were around $7.00. The Commission did not make any cost figures and all the state commission had before it as to the costs were the figures introduced by the carriers, showing about $7.00. (Tr. 2938.) But when this case got into the court the master wanted another cost statement, and in that other cost statement the carriers showed that it was around $7.60, somewhere between $7.00

and $8.00, and then the Commission introduced figures to offset that and the figures the Commission introduced were somewhere in the neighborhood of $4.00. This order of the Commission was attacked in the state court and a judicial proceeding and trial was had in the Vanderburgh Superior Court, at which the Commission did offer its analysis of the carriers' cost study for 1927 and 1928. If I remember correctly, our analysis of the 1928 and 1929 costs showed higher costs than the 1931 analysis. (Tr. 2940.)

Cross-examination.

By Mr. Cardy:

The Indiana Commission permitted the maximum Ex Parte 103 increases without exception. The order became effective around January 4, 1932, and outside of the application for Ex Parte 103 increases there has been no appli- [fol. 1309] cation by carriers for an increase in switching rates intrastate in Indiana. (Tr. 2941.) There were no switching rates before the Indiana Public Service Commission on commodities not included in the all-commodity Lowrey basis. It did not have before it, as I recall, any rates for switching grain intrastate in Indiana. I have no recollection of the carriers filing tariffs with the Public Service Commission of Indiana, seeking to increase the grain switching rates within Indiana, subsequent to the institution of 19610. (Tr. 2941.)

Examination by Examiner Faul:

Our position is similar to that taken by the Illinois Commission. The Indiana Commission is here and we are bound by statute to sustain our order. It is our position that the record is not sufficiently complete from which to make any different deductions. We could not draw any conclusions to satisfy ourselves that the earnings or anything else, and cost, would justify any change in the Indiana rates, any different conclusion. (Tr. 2942.) As to all of them, so far as costs are concerned, we do not figure that costs are anything more than a criterion of what it might possibly be. There is practically no difference in the views of the Indiana Commission and the views of the Illinois Commission. (Tr. 2942.) I do not know whether

the cost study is representative of present-day conditions. I say that the time that has elapsed is so great, and conditions have changed so, that a cost study of that earlier period I do not think is proper to base a decision on at this time. (Tr. 2943.) We desire an up-to-date cost study, and so petitioned the Commission, but were refused, and in that [fol. 1310] we asked for a cost study to cover not only the 15 lines involved in the prior study, but to cover all carriers included in the switching district that the cost study covered, and longer period of time than the prior one, because the time was not sufficiently long to determine the real true cost basis; and it is possibly true that the time consumed in completing this enlarged cost study would be at least as long or possibly longer than the prior cost study consumed. (Tr. 2943.) As to the new cost study made at this time, reflecting conditions that would exist at its completion, I don't think we would be going around again in a circle (Tr. 2943), because in order to base rates we must base them on actual conditions; if the costs today are higher the carriers should be entitled to higher rates, and the transportation would probably seek other forms of transportation than to use the rails. The rates are established by an administrative board with a view to application in the future. (Tr. 2944.) I have no way of knowing, but I do not think costs and figures I prepared for 1927 and 1928 traffic would be comparable with the cost of car movements today. I know there has been a material change in the cost of commodities, and many items of operating expenses in all switching districts. There is no way of expressing a different opinion as to how long present conditions as to movement of traffic operating costs, etc., will continue in the Chicago district, or when operating conditions of 1927 and 1928 will return. (Tr. 2945.) I have watched traffic move and in two years it might get back to the stability of 1927 and 1928, or it might be 3 or 4 years, and it might be a longer time, and in the meantime the application of a rate applied on 1927 and 1928 costs would not be a rate, I do not think, that would reflect the present [fol. 1311] conditions. If the costs are up because of decreased traffic the rates should be decreased, and vice versa. On account of changed conditions it is my assumption that the record here is not a fair one on which to compute costs of operating traffic in Indiana, Illinois, or interstate com-

merce at this time because of changed conditions. (Tr. 2946.)

Cross-examination.

By Mr. Davis:

So far as the Indiana Commission is concerned, our record in this case closed in September 1928, (Tr. 2946) and the decision in the case was August 26, 1931, that is, not saying that it would take us 3 years to decide all cases. It took 2 years on this one on a joint record. We asked in our motion for a cost study and that more than doubled the time and business covered in the prior cost study. If we had a cost study taking double the amount of time, it might or might not take 3 years to decide the matter, but there would be no reason for the carriers not charging and receiving reasonable rates in that time. Conditions in many switching communities change frequently probably not from day to day (Tr. 2947), but there will be changes from month to month. A study of the February movement might not be applicable to August. If we made a study for December it would not be applicable for July and because one made in 1930 would not be applicable in 1931 is the reason we asked for a more complete cost study. A study made for 1930 would not be applicable in 1931, and a cost study made in 1932 with the decision reached in 1933 in all probability the 1932 cost study would not be applicable to the 1933 decision unless it has become more stable. Conditions change from month to month. I am here, representing the Indiana Commissioners, the shippers and the carriers also. (Tr. [fol. 1312] 2948.) As a representative of the Indiana Commission, I signed Exhibit 83, I think. We conferred with the cost study committee consisting of shippers and carriers but not quite as regularly as did the Illinois Commerce Commission representative. Our Commission collaborated with the Illinois Commission on the decision rendered by each before they were handed down; not only before that time but since and our motion for a cost study was practically verbatim that of the Illinois Commerce Commission. I am not familiar with Mr. Walter's petition for a cost study (Tr. 2949), though I received a copy of it.

Mr. Davis: In other words, the two state Commissions and the shippers have been working more or less together on this case, is that it?

Mr. Walter: What do you mean by that?

Mr. Davis: Collaborating.

Mr. Walter: I imagine it is to be assumed since the orders were handed down there is a communion of interest.

Mr. Davis: That is what I want.

Mr. Walter: Are you confining your questions now to since the order was instituted in this investigation under the 13 Section, or prior to that?

Mr. Davis: Since the order was entered.

The Witness (continuing): No. Our statute makes it incumbent on the defendant to go into court and defend and that naturally being a community of interests, we did not care to do anything whatever that the shippers or whoever wanted to come in did not want us to do. In substance, the Indiana law requires us to defend this order of the Commission in this 13 Section case. (Tr. 2950.) The provision of the code as I remember it is that the Public Service Commission is authorized and directed to take any and all steps and put in force every order that the Commission may write and is not limited to court procedings as [fol. 1313] I remember it. We dismissed the tariff that was under suspension. (Tr. 2951.) There has not yet been a decision in the Evansville case I referred to. The switching rates in the Indiana portion of the district are the same for single as for 2 line hauls. I could not tell offhand the number of carriers operating in the Indiana portion of the district, but there are not as many switching lines in the Indiana portion as on the Illinois side of the district. The Baltimore & Ohio Chicago Terminal and the Indiana Harbor Belt (Tr. 2952) operate in the Indiana portion. I think those are the only two absolute switch lines although there has been considerable talk about the Elgin, Joilet & Eastern. If that is considered a switch line, it operates in the Indiana portion, at least it has rails there. The carriers named operating in the Indiana portion of the district also operate across the line into the State of Illinois. I presume there is traffic that moves both state and interstate on those lines within the district. I know that from my work with the committee and my study with the cost study committee. (Tr. 2953.)

Redirect examination.

By Mr. Hufsmith:

There were 15 carriers involved in the cost study, (Tr. 2953.) of which the Elgin, Joilet & Eastern, Pennsylvania, Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt, operate in Indiana. There was not submitted a separate cost or a showing of joint costs between Indiana and Illinois and interstate commerce. All the costs were made jointly under all 3 Commissions. (Tr. 2954.) No valuation of the switching facilities lying within Indiana, separate and distinct from the other was submitted at the hearing (Tr. 2954), nor were operating costs applied to that property within Indiana to purely intrastate traffic shown at the hearing.

[fol. 1314] Recross-examination.

By Mr. Davis:

The exceptions either below or above the normal basis of rates on the Indiana side of the district, as I remember, applied on coke, billets, blooms and cement which were higher, but I cannot recall specifically how many were above 2½¢ for single lines and 3¢ for 2 or 3 lines or how many were below those figures. (Tr. 2955.) There was a 40¢ per ton rate there but what it applied to I do not recall nor do I recall any other than the 40¢ rate that was lower; those rates were not involved in this hearing before the Indiana Commission but were before the Interstate Commerce Commission in its general investigation. (Tr. 2956.)

Examination by Examiner Faul:

I haven't any recollection as to the length of haul on the excepted commodities or how it would compare with the average length of haul of commodities moving on the Lowrey basis, but my recollection is that the Indiana single line haul was about half the interstate haul; on the Lowrey basis the short haul was about 1 mile greater on the average than the single line haul in Indiana and I do not believe that we had any short line haul in the state. We have no figures separating the excepted commodities from the Lowrey basis. We could not do anything with them in the case before us so we did not go into details. (Tr. 2956.)

Redirect examination.

By Mr. Hufsmith:

I do not know the longest haul in the Indiana switching movement, or what merely reflected averages.

Cross-examination.

By Mr. Walter:

I cannot remember the exact date to which the cost study extended, but it was in October, 1927 and the testimony was submitted somewhere around 12 months after that date. [fol. 1315] The proposed report was dated about April 28, 1930 and exceptions were filed and the case briefed and argued and then decided by the Interstate Commerce Commission on July 31, 1931. Our decision was slightly later than the decision of the Interstate Commerce Commission but the effective date was the same as the order of the Interstate Commerce Commission. (Tr. 2957.) Based on my experience and the deliberations of the Commission, I see no reason why cost studies might not be conducted for a longer period than a week, say a month, by the railroads and the data submitted to the Commission and the matter decided in much less time than was taken in this case. The time taken in this case should not afford a criterion of what could be done in this case if every effort was made to expedite it. (Tr. 2958.)

W. J. Womer was duly sworn and testified as follows:

Direct examination.

By Mr. Cardy:

Am traffic manager of the Consumers Company and subsidiary corporations and testified in the former proceeding and am speaking for the same industries that I represented in the previous hearing, being the Chicago Stone Producers Association, composed of the Moulding-Brownell Corporation, successor to the Brownell Improvement Corporation; Federal Stone Co.; Superior Stone Co.; Dolese & Shepard Co.; and the Consumers Co.; (Tr. 2959) all of the producers of crushed stone with plants located within the

Chicago Switching District, having rail connections. These quarries are all located on the outer rim of the Chicago District, but more particularly described on the official map of the Chicago District, issued by the standing switching committee as Bellwood, appearing at the intersection of lines A. and 11. McCook, appearing at the intersection of lines C and 17; and Thornton which is immediately below [fol. 1316] Thornton Junction, at the intersection of lines L. and 29. They are all located on the outer rim of the Chicago Switching District and in Illinois. There are no stone quarries located in the State of Indiana in the Chicago Switching District or adjacent thereto. There are no sand or gravel pits located within the Chicago Switching District, either in Illinois or Indiana. (Tr. 2960.) There are stone quarries within the Chicago switching district not served by rail but none in Indiana. Some of the quarries last mentioned have ceased to operate. They were located at Campbell and Grand Avenues, approximately at the intersection of 10 and I; 19th and Lincoln Streets approximately at the intersection of lines 13 and I, and a quarry on Archer Avenue, located at approximately the intersection of lines 14 and J. The rail quarriers in the Chicago district compete with sources of supply located outside the District which ship into Chicago by rail, by water and by truck. Sand and gravel moves from zones 1, 2 and 3 as established in Jones 420 adjustment to Chicago by rail, and stone also. Sand, gravel and stone move from quarries in zone 1, to Chicago by water. (Tr. 2961.) Sand and gravel move from pits in zone 1 by water; crushed stone, sand and gravel move from points beyond zone 3 by water to Chicago and sand and gravel moves from Canada by water to Chicago and by truck from points in zone 1 to Chicago. There is quite a substantial movement of crushed stone from Lemont, Illinois to Chicago and likewise sand and gravel from Lockport to Chicago. In the past year, the movement of stone, sand and gravel into the district by water has increased substantially in the past year or so. Zones 1, 2 and 3 are those established in Jones 420 adjustment which were established and approved by the Interstate Commerce Commission, Docket 17,817; I do not happen to have the reference.

[fol. 1317] Mr. Cardy: That was gone into very carefully before and I do not want to repeat anything that is already

in the record. I assume that the testimony that has been taken in this case before can be used here. That is true, is it not?

Examiner Faul. (Tr. 2963.) Yes.

The Witness (continuing): I have made a survey of all the crushed stone shipments moving between points in the Chicago District for all the companies on whose behalf I am appearing during the year 1926, which year was selected because in this proceeding the carriers in an exhibit used the month of September, 1926 as the basis for a traffic study. During the year 1926, total cars of crushed stone moving rail between points in the Chicago District were 37,137, of which 30,835 moved intrastate in Illinois and 6,302 moved interstate. The percentage of Illinois intrastate being 83.03 per cent of the total and interstate shipments 16.97 per cent of total. There were 11,676 cars single line Illinois intrastate hauls; joint line Illinois intrastate 19,159 cars, which figure includes hauls via 2 or more lines. (Tr. 2964.) I have no separation as between the 2, 3 and 4 line hauls. Single line hauls Illinois Intrastate represent 37.86 per cent of the total Illinois intrastate shipments of crushed stone. Interstate shipments were divided 2,594 single line hauls and 3,708 cars in joint line hauls. The single line interstate represents 41.15 per cent of the total interstate shipments of crushed stone. Consolidating interstate shipments with Illinois intrastate, the cars moving single line were 14,270 and those moving in joint hauls were 22,867. Single line hauls representing 38.42 per cent of the total shipments. As to volume of movement of crushed stone in the Chicago District our own companies have shipped as many as 20 cars from 1 quarry to one retail distributing yard in a given day. (Tr. 2965.) The quantities may vary [fol. 1318] anywhere from 5 cars to 20 on a given day. I do not know of any commodity moving in the Chicago Switching District in greater volume than crushed stone. A typical movement would be from the Consumers Company quarry at McCook to Consumers Company yard No. 191 at Englewood Station on the New York Central. Another from Consumers Company quarry at McCook to yard 130 at Division street station on the Milwaukee railroad. Most of the stone quarries have retail yards located not particularly near the center of Chicago, but scattered generally throughout the Chicago Switching District. (Tr.

2966.) Taking 1926 and 1927 or when we had what might be called a normal movement, there was a steady movement between the quarry and the retail yards from our McCook quarry, ranging from 125 to 150 cars per day. I have made a comparison as to the earnings on stone in the switching district, intrastate as compared with its earnings interstate and with other commodities. (Tr. 2967.)

On single line Illinois intrastate movements previously referred to the average car haul was 13.64 miles on the 11,678 cars moving in 1926. Freight revenues per car were $21.40 and per car mile $1.57, that is per loaded car mile. (Tr. 2968.) On basis of the rate proposed by carriers, the earnings would have been $31.17 per car and $2.29 per car mile. The average joint line haul distance was 21.94 miles. Per car revenue, $27.03 and per car mile revenue $1.23. On the proposed rates, revenues would have been $38.34 per car and $1.75 per loaded car mile. The average distance of single line and joint line hauls, Illinois intrastate is 18.8 miles; per car revenue, $24.90; per loaded car mile, revenue $1.32. (Tr. 2968.) On the proposed basis the charges would have been $35.63 per car and revenue per loaded car mile $1.89. Single line interstate shipments show average haul of 27.18 miles producing car earnings of $26.90 and per car mile earnings of 49 cents. On the proposed basis [fol. 1319] on interstate, average car earnings would be $32.29 and $1.19 per loaded car mile. The single line Illinois intrastate shipments show about one half the average haul on interstate single line shipments. Earnings per loaded car mile on single line Illinois intrastate shipments were $1.57 and on interstate single line they were 99 cents. The proposed interstate single line rates would produce $1.19 per loaded car mile which is less than present per car mile earnings on the intrastate single line shipments.

These computations do not include the 10 per cent increase authorized by exparte 103, which if used would have increased the disparity as against the Illinois intrastate single line shipments. (Tr. 2969.) In arriving at mileages I took the station mileage via route which the shipment moved in each instance. In computing the average mileage via route of shipments, I found the average short line distance was 65.19 per cent of the distance via the actual route of movement.

Taking Vivian's Exhibit 7-A I find that on single line hauls interstate, crushed stone pays an average of $26.17

per car while the average on all commodities is $19.50 (Tr. 2970) per car or $8.88 less than the average revenue on crushed stone. On 2 line hauls interstate, crushed stone paid $9.23 per car more than the average for all commodities and on the Illinois intrastate it paid $5.79 per car more than the average of all commodities on 2 line hauls. Illinois intrastate 3 line hauls crushed stone paid $8.32 per car more than the average for all commodities for similar service as indicated in Exhibit 7-A. Under the proposed basis of rates in case of single line hauls interstate, the difference increased 34 cents per car; one line hauls Illinois intrastate, $1.78 per car, 2 line hauls interstate $3.71 per car; 2 line hauls Illinois intrastate $2.33 per car; 3 line hauls Illinois intrastate $2.79 per car. The exparte 103 increases were [fol. 1320] not considered in this computation. (Tr. 2971.) I made these comparisons on the cars but have not extended it to a car mile basis.

An examination of Exhibit 99 shows on page 2 under group No. 35 classification of clay, gravel, sand and stone with statistics covering 2,068 cars moving during the month of September, 1926. Comparing the figure of cars with the 11,676 cars of crushed stone moving Illinois intrastate in single line hauls described on page 2 of the exhibit, it shows so far as crushed stone is concerned that it is an understatement per car in the weight factor of 6.07 tons per car. The 11,676 cars of crushed stone presents a better cross section of the results of its transportation by the carriers concerned than the result indicated on Exhibit 99 (Tr. 2972), which includes other commodities falling in the crushed stone classification. It is fairer to show one year's shipments of crushed stone in talking about it rather than one month's shipment of numerous commodities falling into the same classification. (Tr. 2973.) On the basis just mentioned, Exhibit 99 understates per car revenue on crushed stone by $6.64. It shows $14.76 as average per car earnings on classification No. 35, average per car revenue at the bottom of the page shows $11.18 on all commodities while on one year's shipments of crushed stone moving single line, Illinois intrastate, the average per car revenue is $21.40. Translating that to the proposed basis, the figures shown in column 15 opposite classification 35, of $22.98, or compared with an average on all commodities of $15.27, and an average on crushed stone of $31.17, which results

in an understatement against crushed stone of $8.19 excluding, of course, the exparte 103 increases. There are corresponding discrepancies in the averages per ton, both on the present and the proposed revenues. Crushed stone moves in open top equipment. (Tr. 2973.) I do not know of [fol. 1321] any transportation reason why crushed stone should pay a higher revenue per car than other commodities moving in the district and my opinion is that it should pay less than the average. In 1926, there were 37,137 cars of crushed stone moving between points within the district, and by comparison, the movement today is practically nil. I have made a study of this particular proposition.

Exhibit 101, page 2, under classification 35, one line haul, Illinois intrastate shows 30 cars of clay, gravel, sand and stone on which earnings per car on the present basis indicated in column 8 are $22.33 and proposed $33.65. (Tr. 2974.) At the bottom of columns 8 and 9 are shown average per car revenue all commodities of $12.88 and $24.73 respectively. Crushed stone earnings previously mentioned for the year 1926 which would be comparable are $21.40 under the present basis and $31.17 under the proposed basis. The average shown under classification 35 would represent an understatement on crushed stone of $9.45 per car on the present basis of rates and $8.92 per car on the proposed basis, excluding exparte 103 increases.

As to Exhibit 103, on page 12, covering Illinois intrastate 2 line movement, the situation is substantially the same as I have just indicated, except the understatement would amount to $11.83 per car on crushed stone at present rates and $16.02 on the proposed basis. On page 22 the situation is the same except the difference would be $2.98 present basis and $10.58 on proposed basis. The figure $2.98, reached by averaging 2 line and 3 line hauls for the year 1926. I did not have the exact proportion moving 2 lines or the exact proportion moving 3 lines. The figures just given are in connection with the test period from November 9 to 15th, 1931. (Tr. 2975.) I have made the same comparisons as to Exhibits 103 for the test period from [fol. 1322] January 11 to 17th, 1932, excluding exparte 103 increase. That exhibit at page 2 shows the situation substantially the same respecting understatements as I have previously stated in connection with Exhibit 101. The understatement against crushed stone being $9.37 and

$11.83 per car respectively on the present and proposed basis. Page 12, Illinois intrastate, 2 line hauls the difference against crushed stone is $7.10 and $10.03 per car respectively. My investigation to determine the shipments of crushed stone made by rail within the Chicago Switching District during the test period covered by Exhibit 101, shows there were 101 cars during the November period shipped between intrastate points in Illinois and 18 cars between interstate points. Applying those figures to Exhibit 105 in the Illinois intrastate diagram shown at the last of the page, I find the situation on crushed stone differs from that portrayed on all commodities, that is, by the average shown. (Tr. 2976.) Taking commodity classification, 35, Exhibits 101 and 103 show 106 cars shipped during the November test period, while 101 cars of crushed stone were shipped during the January period; classification 35 indicates 25 cars shipped and there were 25 cars of crushed stone shipped. There was a decrease in Illinois intrastate shipments of 75 per cent in volume of cars comparing the 2 periods selected by the carriers and covered by their exhibits 101 and 103, that is, November 9 to 15, 1931 as compared with January 11 to 17, 1932. Further analysis of these figures as between 1, 2 and 3 line hauls intrastate Illinois shows in all instances the crushed stone movement has been less, materially less during the January test period than during the November test period. The difference or the declines in the January test period being as much as 100 per cent under the November test period, which shows [fol. 1323] conclusively that insofar as crushed stone is concerned, there was no blockading of interstate commerce (Tr. 2977), and there was no tonnage or revenue loss to interstate commerce that was gained by Illinois intrastate commerce. Further investigation shows that during the November test period 20,872 tons or approximately 400 cars were trucked direct from the various quarries and during the same period 19 cars moved by rail Illinois intrastate and 27 in interstate movement. The tonnage trucked in the January test period was 4,356 tons. In other words, in the November period 400 carloads of stone were trucked to 119 shipped, and in the January test period approximately 80 car loads were trucked to 27 cars shipped. The stone trucked in the district moves to the plants of building material dealers who handle crushed stone, to contractor set-

ups to be used in connection with concrete work, to steel mills for fluxing purposes, to railroads for use in ballast work and to paving setups. (Tr. 2978.)

The only two building construction jobs of any consequence now running in the Chicago district are being supplied wholly by truck; those are the new post office building and the Field Estate Building. The Field Estate building at LaSalle and Adams Streets, and the post office building is on air rights over the Union station tracks extending from Harrison Street to Van Buren Street and from Canal Street to the parcel post building. Approximately 50,000 tons of stones will be used in that job which is now running but far from completed, which would mean approximately 1,000 cars. (Tr. 2979.) The Field Estate building is divided into 3 units, 1 of which is being built at the present time, which will require approximately 25,000 tons for the 1 unit, of the remaining units 1 will use substantially more than the present one because it will be constructed as a tower, the center section. In the past year or so there was a grade separation project near 16th St. and Canal St., [fol. 1324] where the mineral aggregates were delivered by truck. This separated the grade of several railroads and a public street, and there has been considerable improvement work on the lake front in Grant Park and in the territory of the 1933 World's Fair.

Virtually no stone was trucked from the quarries 2 or 3 years ago because they were without facilities to efficiently or economically load trucks. (Tr. 2980.) But competition has forced quarries on the outer rim of the district to install facilities for truck loading and to utilize truck transportation. Insofar as I control the movements of shipments, I say possibly the carriers will lose revenue because the movement will change from rail to water or to truck movement or both, and I assume other stone interests on whose behalf I appear are considering plans just as my interests are to meet that situation in substantially the same manner in which we propose to meet it. (Tr. 2981.)

That is not intended as a threat. We have plans under way and have spent a lot of time making investigations to determine just what we could do. We find we can truck cheaper than we can ship on the present Illinois intrastate rates. The exparte 103 increases, increased our burden by exactly 10 per cent and that increase diverted traffic to the

trucks. I have no figures on truck movement prior to exparte 103 increases for comparable periods, but I can say from my general observation covering the period of the last 4 years the volume of crushed stone moving by trucks between points in the Chicago District have increased. After the exparte 103 increase became effective during the January test period, we shipped 25 cars intrastate by rail and 2 cars interstate or a total of 27; that is the total state and interstate. 27 cars were shipped by rail during the [fol. 1325] January test period divided 25 state and 2 interstate. 119 cars were shipped by railroad during the November period divided 101 state and 18 interstate; and the tonnage hauled by truck was 20,872 tons in the November period and 4,356 in the January period, which was immediately subsequent to the exparte 103 increases. The ratio of trucking in Jaunary was less than in November because the consumption is different (Tr. 2983), the production and consumption of crushed stone are not constant throughout the year. The quarries shut down during January and the trucking is stone taken from stock pile. The study based upon January and November submitted by carriers would not fairly reflect the conditions surrounding the movement of crushed stone in the district and that is what prompted me to select the entire year of 1926 to see exactly the situation as to crushed stone, which is a seasonable movement. (Tr. 2984.) Based upon my knowledge of transportation conditions and the sale and distribution of stone in the Chicago district, I do not see how the present intrastate rates have or could have any effect whatever upon the movement of stone or gravel interstate in the Chicago district (Tr. 2984), because stone has to move between 2 points, being shipped wherever required and if to an interstate destination it will move interstate and if the destination is in Illinois, it will move intrastate. We cannot shift destinations around. With two routes available between 2 points, one being interstate and the other intrastate, I would select the one over which the lowest rate applies, Mr. Examiner, if there were 2 open routes with different rates. Competition forces us to do that if we want to stay in the business. (Tr. 2985.)

I would select the cheaper route irrespective of competition, if I had the opportunity; I would do it every time. (Tr. 2985.) There are no stone quarries in the Indiana

[fol. 1326] portion of the Chicago switching district, and no crushed stone moves from Indiana into Illinois; and outside of an isolated movement where it might formerly move interstate, which under the present adjustment moves state, is the only instance I conceive of where it might affect an interstate movement, which in my judgment would not result to the prejudice of any interstate shipper or purchaser of stone in the Chicago switching district, because the quarries that ship the stone are all located in Illinois. It is a case of the Illinois quarries competing with Illinois quarries. It is not a case of an Illinois quarry competing with a quarry in Indiana. As receivers in Indiana all pay the same rates, and I do not know of any competition between a receiver in Illinois as contrasted with one in Indiana. (Tr. 2986.)

Cross-examination.

By Mr. Davis:

As between a receiver of stone in Illinois, moving intrastate, and one in Indiana moving interstate, each with a single-line haul, the Illinois intrastate rate will be 2½ cents, increased by 10 per cent under Ex Parte 103, making it 2¾ cents, while the Indiana single-line interstate rate would be 3 cents, or ¼ of a cent more than the Illinois intrastate rate. (Tr. 2987.) If the situation such as you suggest exists with the Ex Parte 103 advances, expiring in March, 1933, the Illinois intrastate rate would be 2½ cents and the interstate rate 3 cents. But there are things physically possible that are practically impossible, and I do not know of a situation where there is a receiver or user of stone located close enough to the two lines to have that situation result in any material difference, because in the case of the interstate receiver he could move his shipments by truck from [fol. 1327] the quarries, while the intrastate shipper would have the advantage of rail service and truck service. If the interstate receiver wanted to profit by the difference between state and interstate rates, he would specify truck service. But as far as rail service is concerned, the difference would be a half cent, as far as single-line haul is concerned, ignoring the advances under Ex Parte 103, as between interstate and intrastate single-line movement. (Tr. 2988.) We ship both to state and to interstate receivers of

stone. On a two-line haul in a state movement we would pay 2½ cents per hundred, and on the interstate 3½ cents. But the competitive commercial situation today results in selling f.o.b. destination, and the producer, by reason of competition, is forced to absorb any difference. The receiver or user does not suffer by the difference between interstate and intrastate rates. There is no production in the Indiana district of crushed stone (Tr. 2989); but crushed stone is transported by water to Indiana and delivered thence by truck, and that is competition with the interstate stone shipper whose plant is located in Illinois, and competition he has to meet. We have our yards strategically located throughout the district, according to our best judgment and requirements of the business, and this crushed stone is shipped to those yards, sometimes by car and sometimes by truck. We locate the yards wherever our business judgment dictates. In the last two or three years we have located one, but following the slump in business decided not to go ahead until conditions warranted making the expenditure for keeping the yard. (Tr. 2990.) In the latter part of 1929, by consolidation, we acquired a number of properties in the territory in which the Consumers Company did not have yards, and through subsidiary companies we now have a much broader distribution of yards than prior to the time we acquired the subsidiary [fol. 1328] companies. Some of these new yards are located in the Calumet district, but we do not ship to these by rail and then truck across the state line, and are not contemplating it because we can truck direct from our Illinois properties to the Indiana yards. (Tr. 2991.) We handle stone from our Illinois properties to the Indiana yards both by rail and by truck. The yard of these subsidiary companies are located, some in Illinois and some in Indiana, and we have yards in Wisconsin as well as producing properties. For a job on the Illinois side we probably would truck direct from the quarry, as against shipping to the yard, unloading, stocking, and thence trucking from yard to the job. Our only reason for shipping into our Indiana yards by rail is for stock purposes, where it would be uneconomical to send a big truck hauling a small volume. (Tr. 2992.) We ship both by rail and truck to the yards on the Indiana side of the line. (Tr. 2993.)

Page 2 of Exhibit 101 shows our commodity falling in group 35, and one reason I gave justifying a crushed stone

rate less than prescribed in Docket 19610 is the fact that we pay more per car than the average shown on that page, showing we pay $22.33 while the average is $12.88. (Tr. 2993.) Column 8 shows there are 3 items paying less than $12.88. All other shippers listed except those three could not necessarily use the reason I gave to have their rates either left as they are or reduced. I am concerned with crushed stone and am trying to limit my testimony to crushed stone, but I can easily distinguish between crushed stone values and the values of those other commodities moving on lower rates than crushed stone, or which yield per-car earnings lower than the crushed stone. The companies I represent here are the only shippers of the commodities represented by me whose plants, producing plants, [fol. 1329] are located within the Chicago switching district. (Tr. 2994.) There could not be a shipment made in the Chicago switching district unless it was made by one of the companies represented by me. We have competitors, however, located outside the Chicago switching district, but the ones I represent are all of the producers of crushed stone in the Chicago switching district. You could buy a car of stone from us, have it delivered at a certain spot, and then you could ship it somewhere else. (Tr. 2995.) As to the shipments I refer to, where the revenues were understated, there could not have been other shipments than those I represent that originated within the Chicago switching district, because the figures I gave I obtained at the source. It is possible someone might have taken a carload of crushed stone, produced at Joliet, and shipped it to Chicago to a given consignee, and that consignee may have reconsigned it to somebody else at Chicago. We have never shipped crushed stone for teamtrack delivery. Neither the proposed rates nor the present rates apply between industries and teamtracks or between teamtracks, and for teamtrack shipments we would have nothing but a combination of local rate factors. (Tr. 2996.)

Two of the quarries not located on rails are still operating, but in a small way. One has ceased operations. Our competitors located outside of the district are located in Zones 1, 2 and 3 in Jones 420 adjustment, and also at Sturgeon Bay, Wisconsin; Sarnia, Ontario Province, Canada; Ferrysburg and St. Joseph, Michigan, and certain points on

Lake Superior. The rates from Zone 1 are 65 cents per net ton single-line hauls; 70 cents from Zone 2, and 75 cents from Zone 3. The distances in Zone 1 are for 50 miles and under; 51 to 100 miles in Zone 2, and 101 to 150 miles in Zone 3. Those rates apply within the switching district [fol. 1330] on the initial line, and for connecting line delivery the rates are uniformly 20 cents per ton higher. There are some few exceptions to that, such as the rate from Joliet and Elmhurst, Illinois, to Chicago. Those rates, generally speaking, are 55 cents per net ton for single-line or joint line hauls (Tr. 2998), which were established by the Illinois Commerce Commission as a temporary adjustment pending the outsome of these proceedings. That statement is in the order of the Illinois Commerce Commission. Several cargoes of both crushed stone, sand and gravel have been shipped by water to the East Chicago dock terminal at East Chicago in the years 1930 and 1931. Several shiploads were unloaded in 1931, but I cannot give the exact number. I think there were probably three of crushed stone, and I do not know how many in 1930. (Tr. 2999.) There is no interstate movement from those dockets in Illinois by railroad, and I do not know of an interstate truck movement, but do know there has been intrastate movement by truck; I mean to Indiana destinations. The average load on Illinois intrastate one-line hauls of crushed stone was 51.94 net tons; Illinois intrastate joint hauls, 54.42; interstate single-line hauls 53.81; and interstate joint line hauls 53.12. As to the other commodities used, I do not have the detail of the average loadings, but will say that the average load was less than on crushed stone. As nearly as I recall, the average load of the other commodities is approximately 39 tons per car. (Tr. 3000.) In the case of the other commodities I used the weighs shown in Exhibit 7-A in this proceeding. If I had a copy of that exhibit before me I could tell you the figure I used. The average distances are merely the distances from station to station, as contained in the mileage totals of the various carriers, and I describe them as average car haul distances. It is not a weighed average. We [fol. 1331] operate some of the trucks in handling crushed stone. (Tr. 3001.) They are of varying sizes from a Ford to a 5-ton Mack truck with sideboards. We could probably put half a yard or may be 1500 pounds of crushed stone in a Ford truck. We are permitted to load 15,000 pounds in

cities on a 5 ton Mack truck. In some instances the weight factor, by state law, is limited to 36,000 pounds gross, and the truck weighs around 5,000 pounds (Tr. 3002), and the maximum load we can haul within the city is equivalent to 7½ tons, but the truck has a carrying capacity of approximately 15 tons, but we have to keep within the law in regard to the weight on these trucks.

Cross-examination.

By Mr. Behrle:

In this last question I used the word "we" as meaning the Consumers Company. In speaking of shipments to Indiana I did not mean that the Consumers Company trucks to Indiana. In that instance I was speaking for those in whose behalf I appear here. The Consumers Company has trucked from McCook to South Chicago and Hammond. Ordinarily such commodities would be trucked from Thornton (Tr. 3003), which is the nearest quarry. There is no understanding between the various shippers that certain territory inside of Chicago shall be served by certain companies. We could not make as low a price on stone trucked from McCook to South Chicago or Blue Island or Harvey as a quarry located much closer and having lower trucking costs. A number of factors determine whether we ship by truck or by rail, but competition is the principal one. Competition determines it, because we would not expect to get business for a truck haul from McCook to Harvey in competition with a quarry located at Thornton, a mile distant from Harvey. Since testifying in this case in 1928 our [fol. 1332] truck hauls have increased in distance (Tr. 3004), and distance is one of the factors we consider in determining whether to make a truck shipment or a rail shipment, but as we increase truck hauls the average rail haul will not be longer. Increased trucking hauls would not increase average rail haul, because the rail haul and the crushed stone business is limited to a very short radius now. Pits located in the territory limit very materially the territory into which we can profitably ship by rail. I wish the rates were all the same now, speaking of Joliet. But in the switching district the rates may be different from one quarry than from another (Tr. 3005) quarry, because of a one-line haul from one or a two-line haul from another, or

a two- or three-line haul from another one. Take a quarry located on the Indiana Harbor Belt at McCook, Illinois, shipping to Blue Island, on that line would be a one-line haul; but from McCook to Thornton, served by the Baltimore & Ohio Chicago Terminal and other lines, but not on the Indiana Harbor Belt, a two-line movement would be necessary to reach Blue Island on the Indiana Harbor Belt. Since the hearing in 1928 the Consumers Company has acquired the quarry of the Peoples Crushed Stone Company. (Tr. 3006). We operate the Peoples Company and operate the quarry when business justifies it, but it is not operating now. We acquired it approximately a year ago. (Tr. 3007.)

Redirect examination.

By Mr. Cardy:

My position in the former hearing was to this effect, that crushed stone, sand and gravel should take the same basis as every other commodity, but I also proposed a per-car scale of charges to be applied as an all-commodity basis. The per-car scale is reproduced by the Commission in its decision and commented upon. In this proceeding I take the position that we not favor an all-commodity basis; [fol. 1333] that the present rates intrastate in Illinois, as well as the interstate, are entirely too high and are more than crushed stone as a class of traffic will bear, and are forcing us to other forms of transportation. (Tr. 3010.) My judgment is that the present basis that the carriers propose in this proceeding casts an undue burden on stone as compared with other commodities. In making rates for distances of 20, 30 or 40 miles on different commodities, the value of the commodity, the weight which it loads, and various other factors are given consideration; and it is my position, in applying a rate in cents per hundred pounds on stone that likewise applies on higher-grade commodities, results in excessively high rates on stone, taking into consideration the low grade of the commodity. (Tr. 3011.)

Cross-examination.

By Mr. Walter:

Since the 1928 hearings a number of highways have been paved, some have been widened, and new arteries have been

opened up over which trucks can operate. The competition between trucks for business has become keener than it was, and the trucks are more numerous. The carriers have made efforts to established rail rates that will keep the business outside of the Chicago switching district but not within the Chicago switching district. (Tr. 3012.)

Recross-examination.

By Mr. Davis:

The carriers are trying to get 3, 3½ and 4 cents in the district, but that is not going to help the railroads get a movement of crushed stone. That is going to help drive it away quicker than any one thing I know of. (Tr. 3013.) My answer regarding competition was intended to convey this thought, that the producers of crushed stone whose [fol. 1334] quarries are located within the Chicago district have no producer competitors with properties where they produce crushed stone located in the Chicago district, but that their competitors producing crushed stone have properties outside the district from which they ship into the district. I represent the Consumers Company, the Dolese & Shepard Company, and there is the Chicago Stone Producers Association. That is not another producing concern. It is an organization composed of various producers of crushed stone whose quarries are located within the Chicago district, of which the Consumers Company is a member. (Tr. 3014.) Dolese & Shepard, and others, are members. There is the keenest competition between the Consumers Company and the Dolese & Shepard Company; and there is competition in the district between the quarries located within the Chicago district that ship from the quarries such as Thornton, McCook and Bellwood, but I understand your question to be to this effect: Is there any producer of crushed stone other than the members of the Chicago Crushed Stone Producers Association, with producing plants located in the Chicago district? (Tr. 3015.) The Consumers Company is separate from the Dolese & Shepard Company. There is no relationship between these two except a competitive relationship, and the Chicago Stone Producers Association is one composed of such concerns as Consumers Company and Dolese & Shepard Company. Other members of the Chicago Stone Producers

Association are Molding-Brownell Corporation, with Federal Stone Company and Superior Stone Company as subsidiaries; the Peoples Crushed Stone Company is a subsidiary of Consumers, so the 6 or 7 members of the Chicago Crushed Stone Producers Association at the time of the former hearing have dwindled to 3, but the 3 represent the same quarries that the 6 or 7 previously represented (Tr. 3016); and there is keen competition between the individual members of the Chicago Stone Producers [fol. 1335] Association within the district, very, very keen. My answers regarding competition were as to crushed stone against crushed stone, and were not confined to sand versus crushed stone, gravel versus crushed stone, or some other commodity versus crushed stone. There is competition between crushed stone such as we have talked about, and crushed slag, which is produced both in the Illinois and the Indiana parts of the district, and the Consumers Company comes into competition with the producers of crushed slag in (Tr. 3017) Indiana as well as in Illinois in all instances where crushed slag can be used as a substitute for crushed stone, which in all instances cannot be done. My answer would be the same in regard to the Dolese & Shepard Company and the other companies comprising the membership of the Chicago Stone Producers Association, with their affiliated companies.

I said that the crushed stone used in the separation of the grades at 16th Street and Canal Street was trucked there. I am very sure this crushed stone used in that construction was not shipped from Thornton over the Baltimore & Ohio Chicago Terminal. That stone was hauled by truck from the McCook quarry of the Dolese & Shepard Company. (Tr. 3018.) The president of that company is in the room and he would undoubtedly be in a better position to answer that question than I am. All producers of stone in the district ship by rail into Indiana, will pay the interstate rate, and each will pay the same if they ship via the same railroad route; and if they ship into Illinois they will pay the intrastate rates and each will pay the same if they ship via the same rail route. (Tr. 3019.)

Trucks are not used in transporting crushed slag to anywhere near the same extent that trucks are used in transporting crushed stone because the conditions are entirely different. (Tr. 3020.)

[fol. 1336] J. L. ROBERTS was duly sworn and testified as follows:

Direct examination.

By Mr. Walter:

Am traffic manager of the Barrett Company and at the former hearing, stated my qualifications.

Mr. Walter: I take it is not necessary to restate them.

Mr. Davis: No.

Examiner Faul: There being no objection, it will be so considered.

Yesterday in glancing over the record in the original case I was particularly interested in the opening statement of Mr. Galligan and believe the Jones & Loughlin case was overemphasized and it is my purpose to emphasize our situation. At our plant at the South fork of the Chicago river, we produce paving tar, principally; roof tar and creosote oil, as stated in my previous testimony. These articles are produced from crude tar which we obtained from Interlake Iron Corporation and Wisconsin Steel Co., and for a number of years, we transported this crude tar to our plant by tank barge. (Tr. 3022.) Our reasons for changing to rail are set out in my previous testimony but we will go back to transportation of the material by barge if the proposed rates become effective. At the original hearing, I understood our rate was to be increased from 2½¢ to 3½¢. I now understand the increase will be to 4¢, making it doubly sure we will not be imposed upon to the extent carriers are making — an effort to saddle us with unreasonable rates. My opinion is that the rates found reasonable by the Interstate Commerce Commission on interstate traffic in the Chicago District are unreasonable. At the prior hearing, a representative of the Illinois Central appeared and expressed a willingness to continue the rate on our commodity and I had assurance of the lines involved or [fol. 1337] parties to the rate that they wanted to continue the rate. My understanding is at the opening of this hearing they withdrew that. My statement is no threat (Tr. 3023); it is simply a matter of the economic condition, that is all. Our price is down to the 1914 level and we cannot pay freight rates that are 100 per cent of the 1914 level.

Every penny with us counts today. We can handle this commodity by barge at a rate less than the 2½¢ present rate. The only reason we gave the business to the Illinois Western was because it asked us to do that and we were helping out the railroads but we do not want to be penalized for doing it.

Examination by Examiner Faul:

Tar moves in tank cars, and the Commission cited our particular situation, told us we better come and ask for an allowance for tank car movement and I referred the matter to our traffic analyst and our attorneys to make up a case. The carriers have not done anything to meet the suggestion of the Commission that they compensate us for the use of the private cars independent of the rate. (Tr. 3024.)

Cross-examination.

By Mr. Davis:

We receive this commodity crude coke tar; we do not ship it. It is a product of the By-product Coke Ovens obtained in destructive distillation of coal for coke. It is our raw material just like iron ore (Tr. 3025) is raw material for pig iron and like any other raw material. We are particularly interested in the rate on this crude coke tar but generally we are interested in the whole situation. This crude coke tar originates at coke ovens in Illinois and there are two plants in Indiana at Indiana Harbor (Tr. 3026), which I think is within the Chicago District. There is a very in-[fol. 1338] significant movement from Indiana Harbor and we do not get it from there. I do not know particularly about the movement or whether it ceased, although I know there is a small movement from Indiana Harbor into the Chicago district and it has to move all rail on the interstate rates. (Tr. 3027.) The majority of our crude coke tar comes from coke ovens from Illinois within the district on which we would pay the rail rate intrastate. (Tr. 3027.) Of course all the concerns in the business are located within the Chicago District; they have plants within the Chicago District and they get tar from points within the Chicago District intrastate; we also get tar from points in Michigan as far as Detroit from points

down in Illinois and points down in Indiana. We have both movements, a switching movement and the other movements. We use crude coke tar principally to make paving tar. There are two other concerns in the Chicago District dealing in paving tar (Tr. 3028), but I do not know the locations of their plants. One is located on the Chicago & Illinois Western which gets its tar from the Peoples Gas Light & Coke Co., right next door to it. I cannot give the location of the other plant, it is somewhere in the Chicago District but do know it gets most of its tar from Blue Island, Illinois—that is, Chicago District tar. We have around 2,000 tank cars which we own. (Tr. 3029.)

Redirect examination.

By Mr. Walter:

We get all of our crude coke tar from Illinois points of origin as far as the district is concerned. (Tr. 3029-3030.) The movement from Indiana is a negligible one. I did not say that we got some from Indiana. I said I understood there was a small movement from Indiana; that there were 2 concerns located in the Chicago District besides ourselves and there was a small movement to one of them, but we [fol. 1339] get nothing from Indiana in the Chicago Switching District. We get some from outside on a line haul. (Tr. 3030.)

Mr. Walter: Your Honors Please, there are 2 matters I would like to take up before we put another witness on. I gave Mr. Davis an extract from the testimony of President Rogers of the Elgin, Joliet & Eastern Railway which gives the mileage of that road and the industry tracks that are on it. Is it satisfactory for me to read those figures into the record, Mr. Davis?

Mr. Davis: Yes.

Mr. Walter: The main line of the Elgin, Joliet & Eastern is 211 miles, that is, main line and branches. In addition, there are something over 400 miles of industry track owned by that line. Is that a fair statement?

Mr. Davis: That is according to the statement. (Tr. 3031.)

Mr. Walter: In addition to that, I requested respondents to furnish a statement of industry tracks owned by respondents with cost of maintenance and if rented to an industry,

the terms of rental, in order to have in this record a statement that will answer the inquiry that was unanswered before as to the extent of the industry track ownership by the carriers and the industries. (Tr. 3031.)

I know it is difficult for carriers to give us that data but in one of the Commission's investigations, a question was sent them asking for the information and I am under the impression that the carriers, having gathered that information for the Commission, could furnish it to us in this case so far as the Chicago Switching District is concerned.

Mr. Davis: I assume there is now a part of this record, Mr. Walter's letter to Commissioner Lee, dated April 14, 1932, entitled in both dockets, 19610 and 24950, in which he [fol. 1340] makes request for certain information regarding industry tracks and my reply to him is to a similar letter from Mr. Walter, under date of February 26, 1932.

I assume the record also contains the letter from Commissioner Lee to myself under date of April 25, in which he called my attention to Mr. Walter's letter of April 14, (Tr. 3032.) and Commissioner Lee suggested "under the circumstances, I will be glad to have your advice promptly whether the carriers will make available this information (ownership of industry tracks. Abstractor.) which apparently has been compiled in connection with exparte 104, part 3." (Tr. 3033.) I replied to Commissioner Lee's letter and, among other things, said that his letter seemed to have modified the request as to furnishing this information by limiting it to the returns made in exparte 104, with the suggestion that we would do everything to hasten the cause to a final conclusion but we did not want to be required to furnish information to Mr. Walter that would cause us to expend considerable sums of money in preparing something we did not intend to offer ourselves or feel was germane to the issues. (Tr. 3034-3035.)

The side tracks that are owned by the railroads and referred to in return made in expare 104, part 3, only cover those side tracks that were put in by the railroads, but not in strict compliance with orders of the Director General. I have shown Mr. Walter the return of the Milwaukee here; he has not had time to study it in detail but I am certain that he will answer me that this will not give him the information or anything like the information that he wants.

Mr. Walter: There is another factor to that also, if the

Examiners please. The carriers decline to give us access to the working sheets. Unless we can go back to the work- [fol. 1341] ing sheets of the cost study to the time of the engine at the particular industry along with the separation of ownership, which would not do us any good.

Mr. Davis has declined to do that and unless we can have access to that so that we can apply time against ownership, it would not do us a bit of good to have the data and what he has, there, would not do me any good anyhow.

Mr. Davis: I want to show this to the examiners, so they can follow it although they probably are familiar with it anyhow. (Tr. 3036.)

Insofar as the returns in exparte 104, part 3, is concerned, if Mr. Walter so desires, the carriers can furnish him the return insofar as it relates to industries within the Chicago District.

Mr. Walter: That does not give me any of the information requested so that we could separate as between industry tracks owned by the railroads and those owned by the industries and the cost of the ownership, etc. (Tr. 3037.) I have no way of getting that information and in addition, if I had, it would do me no good unless carriers would make available the working papers in the cost study which were available to Mr. Oliver. They have declined to do that and I now ask that they be requested to do it, to make them available so that we can make that study just as available.

Examiner Faul: Mr. Walter, in Commissioner Lee's reply of April 25, to your letter of April 14, he stated among other things that because of the action taken by the Commission on your several prior petitions for reconsideration and further hearing of this case, and on your motion to require further and more detailed cost study, he was [fol. 1342] not inclined to make request to the carriers that would require them to give access to their working papers (Tr. 3037), and especially because the shippers had had ample opportunity prior to former hearings as he understood it to obtain from carriers records and working data desired. In view of the attitude taken by the Commissioner in his letter of April 25, the examiners will, of course, take the same attitude at this time and will not ask the carriers to furnish the information referred to.

Mr. Walter: We respectfully except to that ruling and insist that the data is material and that we are entitled in this case to see the data for investigation and preparation of data particularly bearing on the issues in this case which are different from what they were in the original case.

Examiner Faul: The hearing will stand adjournment until Monday morning, May 9th, at 9:30 o'clock A. M. (Tr. 3038-3039).

Hearing reconvened at Chicago, Illinois, May 9, 1932.

J. E. PIERCE was duly sworn and testified as follows:

Direct examination.

By Mr. Cardy:

Am traffic representative of the South Chicago Coal & Dock Co., operating docks and yards located on the South branch of the River at 92nd St., right there at the harbor. It handles bituminous coal coming from Eastern bituminous fields down through the Great Lakes and over the South Chicago docks as well as all rail movements from these Eastern facilities. (Tr. 3040.) The Company has large storage facilities at South Chicago and we have two distributing yards at the present time in Chicago but are not shipping to these yards from the docks; we ship all rail [fol. 1343] into these yards. I have a map marked Exhibit 119 showing where coal moves in the Chicago district and how it is distributed and points to which it is distributed in the district. Said exhibit received in evidence, marked "Exhibit 119, Witness Pierce." The tonnages shown in red on the exhibit are distributed at the points shown with the dot. We have not indicated the industry or the consumer and have not shown any tonnage for our 2 distributing yards. (Tr. 3041.) We distribute the coal so shown at these various points either all rail generally or by truck from our dock at South Chicago under the present conditions. The coal to the 2 yards moved all rail and practically every tonnage shown excepting one on the immediate South side of 50,000 tons were shipped direct all rail but the 50,000 tons, I guess practically all moved by truck. The all

rail shipments referred to were shipment all rail from the Eastern fields that did not come over our docks at all. (Tr. 3042.) Today there is no movement all rail from our South Chicago plant to the points of destination shown in the Chicago District. We would like to ship all rail from the South Chicago dock to all points on the map. Our company attempted so to do about 2½ years ago, but after trying 30 cars, were forced to stop on account of the high switching cost. (Tr. 3042.) Our company is going ahead to increase its dock facilities and it is our intention to bring more coal over these docks. They have a heavy investment and these docks have to be used. There has been a big increase in the movement of this coal over the dock. It has not been a tonnage that will make the docks pay. In addition to the tonnage shown on the map, we distribute by truck about 150,000 tons per year to small consumers such as hospitals, hotels and various institutions; switching rate [fol. 1344] situation has forced us to the retail business; and that has provided practically all our coal tonnage over the dock, but that business as our company views it could never be made to produce a volume big enough to make the docks pay on their investment. In order to establish reasonable rates (Tr. 3043) we have in mind filing an intrastate complaint seeking rates on which we can move this coal within the Chicago District. Outside of the 30 cars, we attempted to move, about 3 years ago, there has been absolutely no coal from the South Chicago docks to points in the Chicago District all rail. There is no dock which might be termed a point of production for coal in the Chicago District that I know of at the present time. There would be no coal outside of what originates at our dock that originates in the district and moves to a point in the district that I know of.

Cross-examination.

By Mr. Walter:

I do not think the carriers have shown any disposition to establish rates that would move this traffic in competition with trucks. I think they were approached as to that before I came with this company. So far as I know, no movement has been made that would give rates that would move the coal.

Examination by Examiner Faul:

The rates by truck run from 30¢ up as high as $1.00 per ton, which includes delivery right to the consumer's plant. There is an unloading cost for the plant there which really takes the place of the switch movement, as well as local delivery after unloading. I could not give the maximum haul because we do some trucking up to the Northwest side of Chicago at the present time to some small consumers and I understand that is where the $1.00 rate applies and I could only estimate the distance. (Tr. 3045.) There was no change in the all rail rate some 2 years ago when [fol. 1345] we discontinued using all rail service. That was more in the way of an experiment. We opened a yard on the West side and attempted to move coal over the dock to the yard and sell it, but after moving 30 cars, they found it could not be done. The all rail rate from our mines is $3.09 per ton, which applies to anywhere within the switching district.

Cross-examination.

By Mr. Davis:

Eliminating handling charge over the docks, our rail and lake rate to the docks is $2.34. We do not truck from the South Chicago dock to the points shown in red on Exhibit 119, that is, not to all of them. We truck to the one shown immediately on the South side next to the Illinois Central, at the University of Chicago, which covers the 50,000 tons. (Tr. 3046.) That is, the only individual large tonnage, but as I explained, we truck about 150,000 tons a year direct to smaller institutions. The movement shown at Riverdale and the one near Burr Oak, are also all rail. The latter, about 20,000 tons. All others except to the University of Chicago are all rail. An all rail shipment to the University of Chicago would have to be switched to the Illinois Central. I am not sure whether the Short Line would have a direct interchange with the Illinois Central. If they have, it would be a two line haul, if not, a three line. (Tr. 3047.) I think there is a track from the Illinois Central on which the University of Chicago could unload coal in the vicinity of the University; I do not know whether there is rail connection to the University

of Chicago or not, but believe there is an Illinois Central team track within just a short distance of that point, located, I think around 53rd or 54th St. I do not know whether the University of Chicago has its own siding or not; it may have. I haven't figures showing division, but [fol. 1346] I do not think coal handled over our docks is mostly for bunker fuel. I did not testify on behalf of our company against the railroads involving rates on coal to Rockford. (Tr. 3048.)

Redirect examination.

By Mr. Cardy:

Galligan's I. C. C., 197, being directory of industries in the Chicago District, located on railroads indicates that the University of Chicago has a team track on the Illinois Central, or a private siding. I have no personal knowledge about it but this shows the heating plant of the University located at 61st & Blackstone Ave., Chicago, on the Illinois Central indicating that the plant we deliver to must have an industry on the Illinois Central. (Tr. 3049.)

Mr. Cardy: The evidence in the complaint case, insofar as it is relevant in this case will be stipulated into this record. Is that correct?

Mr. Davis: Yes, that was the agreement, but I want to call attention to this fact: In the complaint case, there is nothing but Section 1 involved; therefore when this case is closed, I am unable to see how there could be any evidence offered in the complaint case in regard to Section 1 that would be applicable to this case. It would be legally impossible.

Mr. Cardy: Here is the evidence I have in mind which would be material, that is, I have a couple witnesses here that I could put on at this time to show that the present rates on stone are actually higher than the traffic will bear. That goes under Section 1 and also goes to whether or not the present rates if we cannot move any traffic, are an undue burden on interstate commerce. If you will stipulate that, I can put in such evidence. I will argue the materiality of it at that time.

Examiner Faul: It will be so understood. (Tr. 3050.)

[fol. 1347] ROY W. FLETCHER was duly sworn and testified as follows:

Direct examination.

By Mr. Walter:

Am a statistician and selling accountant in the Daily News Building, Chicago. I have had 30 years experience in railroad accounting and statistical work, commencing in 1902 in Salt Lake, Utah, in the accounting department of the Oregon Short Line Railroad Company; was 14 years with that company, going through all the work in the disbursement and general accounts department and for 5 years was auditor of disbursements and general accounts, and 2 years assistant to the auditor; and during that time handled all accounting in connection with the maintenance of way, maintenance of equipment and trasportation and store department accounting; (Tr. 3051) and in addition, handled practically all of the statistics issued by the accounting department, because thosp were all consolidated and the final papers issued in the disbursement office. I prepared annual reports to State and Federal Commissions, annual operating statements for the management and data for annual reports to stockholders; filed data and testified in rate cases, one being the 15 per cent case heard in 1917 and compiled data for the Mail Pay case, begun about 1911; conducted confidential investigations for the President of the Union Pacific and Vice President and General Manager of the Oregon Short Line for legal and accounting operations. In 1917, resigned from the Oregon Short Line and entered the service of the Interstate Commerce Commission, reporting to New York City, as a Grade 1 accountant in the telephone and telegraph section; later became accountant in charge of that section which handled the valuation work of the Western Union and Postal systems that covered the entire financial story of their properties from organization to date of valuation; was trans-
[fol. 1348] ferred to Washington in 1921 as Assistant Supervisor of Accounts in the Accounting Section of the Bureau of Valuation. (Tr. 3052.) From then until February, 1926, was engaged in the preparation of valuation reports on railway properties, some of which, for which I had charge of the reports, included Union Pacific, Bur-

lington, Santa Fe, Northern Pacific, Atlantic Coast Line, Denver & Rio Grande and a number of other large railroads in the territory West of the Mississippi River (Tr. 3053); in addition had charge of force preparing reports on the smaller short line carriers, and during that time took care of about 800 of those; testified on behalf of Bureau of Valuation in working capital matters and in recapture cases; also conducted investigations for the accounting section of Bureau of Valuations as to depreciation of property; was member of committee that was appointed to study question of accounting in connection with the consolidation, merger and purchase of railroads. When preparation of the tentative valuation was transferred to the accounting section was in charge of that. On February 28, 1926, resigned from the Commission with intent to go in business for myself, but accepted a position with the Burlington on March 26, 1926, as its auditor of miscellaneous accounts in charge of additions (Tr. 3053), betterments and construction and valuation accounts and other assigned duties. Was immediately assigned to work preparing data in connection with the Hoch-Smith cases and other cases in Western trunk line territory, including the class rate, livestock and grain cases; also prepared data and testified on behalf of the Burlington in suit against the state of Nebraska regarding refund of $2,500,000 of taxes; testified before state commissions in several matters and constructed terminal cost studies; the first cost study was in connection with the class rate case, [fol. 1349] the Burlington Railroad being assigned 21 stations at which a study was to be conducted. I had charge of that, though I did not get into the detail of it because I was engaged in other work that took me out of the city. When the switching case came up the Burlington was selected as one of the roads to make a study, and I carried on that work, all of which was done under the method prescribed in the Saur-Coverston formula. On October 1, 1928, resigned from the Burlington and engaged in business for myself, since which time have been assisting small carriers in their valuation matters under valuation orders of the Commission (Tr. 3054) in connection with preparation of recapture cases. Compiled accounting valuation data for the Boyne City, Gaylord and Albany, a property acquired

by the New York Central under its unification plan; testified before the arbiters and the Commission regarding that case; conducted a study for the purpose of determining amount of damages in rebate case resulting from a railroad engaged in the production of gravel in competition with a shipper on its line. I testified in the switching case in behalf of the Burlington for about 15 minutes, I think. My connection with the hearing was to this extent: I attended hearing on the forenoon of the first day and the hearing in the forenoon of another day, and one other time was there a short time towards the close of the hearing at the Edgewater Beach Hotel, in which I answered certain questions propounded by the Illinois Commerce Commission. (Tr. 3055.) I did not submit any exhibit in that case My only connection with the work that entered into the case was to conduct the collection of data on behalf of the Burlington Railroad; was a member of the general cost study committee that assembled for the purpose of discussing the manner of procedure; all work I did was in connection with the Saur-Coverston formula; outside of that was the assembling of data under such formula as [fol. 1350] they thought proper to be chargeable to the different accounts for the accounting period. Outside of those matters and the general discussion in the committee, had nothing to do with final matters considered by what I understood to be the hearing committee in regard to exceptions that were raised and ironed out, or attempted to be ironed out by the shippers' representatives; had no part in the deliberations except to furnish data regarding allocations for circuitous routes on 2 movements involving the Burlington. My first employment by the protesting shipper interests was in connection with the preparation of the reply to the proposed report, about June, 1929, I think, having resigned from the Burlington October 1, 1928. (Tr. 3056.)

(Transcript record page 3057 shows: The discussion by the witness of pages 1 to 28, both inclusive, of Exhibit No. 120, and cross examination in connection therewith is set forth in the record in Docket 24950, pages 102 to 163, both inclusive. (Abstractor.))

Pages 29, 30, 30½, 31 and 32 of that exhibit are shown for the same general purpose of making comparison of

total cars for the month of September, 1926, and for cars shown as study cars; of course they are not study cars because there was no study of any car moving in September, 1926, so far as cost of movement was concerned; but using for explanation in connection with one-line movement, column 4, page 29, we find there is quite a variation between the movements. (Tr. 3057.) If we are to have a fair cost of the Chicago switching district it is necessary to make a very careful checking of the cars in the different movements, and all of the railroads involved should be studied to see how the cars move, because necessary to balance it as between railroads, as between classes of traffic, and when you get into individual classes of traffic, that is, all commodities, it is necessary to know between what points those cars move, because there is a different rate to [fol. 1351] different industries, and you must have a representative, a sample, of the whole. That is all I have to say. (Tr. 3058.)

Mr. Davis: I want to move to strike out the exhibit and testimony of this witness. I want to renew my motion at the close, when he says that is all he has to say. It has no bearing on the issues involved here; it is only an attempt to have the case, Docket 19610, reopened in regard to the cost study, which attempt has been denied twice or three times by the Commission.

Examiner Faul: It seems very evident that Exhibit No. 120, and especially the first 28 pages thereof, relate primarily to the reasonableness of the rates; there is no segregation either in the exhibit or in the testimony by the witness as between interstate and intrastate movements, with the exception of the latter pages of the exhibit, that is, pages 29 to 32, inclusive. (Tr. 3058.) At the outset of this hearing it was stated that the two cases would be kept separate, and in order that that procedure may be followed, the examiners now rule that this Exhibit 120 (Tr. 3058), pages 1 to 28, and the witness' explanation thereof, should be taken and transferred bodily to the complaint case, being No. 24950, and the remaining pages of the exhibit, 29 to 32, inclusive, and the explanation thereof, properly remain as a part of the Section 13 case.

Mr. Walter: But the stipulation, as I understand it, is, so far as what you have now transferred to the formal complaint, is material to the 13th Section case. It is a

part of this case; so the only question left to determine, is whether, in the Section 13 case, the reasonableness of the intrastate rates is involved. If that is true, then you are bound under the stipulation to consider it, so it does not make any difference which record it is in. If it is material to the issue it has to be considered. If it is material in the [fol. 1352] other case it is material here.

Examiner Faul: And the Commission in the end will determine whether or not it is material. (Tr. 3059.)

Mr. Walter: That is right; it does not make any difference which case it is in or which record it is in. I except to the examiners' ruling that it be transferred bodily, and hope that won't be done. Take Mr. Fletcher's testimony and incorporate it in whatever record has to be made up for court procedure, if any.

Mr. Davis: That is the reason I made the objection; if he wants it in 24950 of course he can have it in there.

Mr. Walter: The point I now make is, if we are going to have to make up a record later in an appeal to set aside an order of this Commission, I want the record to show that this testimony was entered into the 13th Section case and the examiners excluded it.

Mr. Davis: On my objection.

Mr. Walter: Yes, on your objection. (Tr. 3060.)

Cross-examination.

By Mr. Davis:

Regarding pages 29 to 32 of Exhibit 120, it goes beyond the exceptions to the proposed report by the shippers, that the month of September, 1926, did not show an average condition in regard to the number of cars handled of the different commodities shown. We are dealing on the one hand with total number of cars, both so-called study and non-study cars. As I understand the figures for column 3, they represent movements for which there were comparable movements based on the test studies in the week in 1927, using all of the study ratios to match up a complete haul. In a general way this same contention was made in the exceptions to the proposed report, but the purpose of [fol. 1353] this statement is to show how it affects the individual commodities, and the exception made to the proposed report bore out that same general idea in a general way.

(Tr. 3061.) The one-line haul shown includes the one-line haul of the Elgin, Joliet & Eastern.

In my direct testimony I failed to comment on certain items on page 29; item 37, asphaltum. The study shown is 115 per cent; that indicates that somewhere along the line there is an error. It is not a proper showing, because you could not have more study cars than you had total cars, and I think it is just a question of classification between groups. The same situation appears in column 7, items 64 and 65, showing the study cars are way beyond the total cars. I show these as indicating things that were noted. They are not of special significance because I think possibly what is shown for item 66 probably applied against item 67, or vice versa.

Regarding those percentages, the study was based on one week's time, whereas this is a showing for four weeks, and the actual test was for about one-fourth of this percentage.

Mr. Davis: Now, finishing my cross examination, and with the witness' explanation of pages 29 to 32, both inclusive (Tr. 3062), I move that those pages of Exhibit No. 120, as well as the testimony given in connection therewith, both on direct and cross examination, be transferred bodily with the rest of the exhibit and testimony to Docket 24950.

Examiner Faul: The motion is overruled. Is that all, Mr. Davis?

Mr. Davis: Yes.

Examiner Faul: I notice the title page of Exhibit No. 120 includes I. C. C. Docket 2900, which was included in the original proceeding, but the scales therein under suspen- [fol. 1354] sion were required to be cancelled, and therefore that docket is not involved in the further hearings. Elimination of that also technically removes the Chicago Heights issue from the Section 13 proceeding, as it was because of that docket that Chicago Heights was in the original proceeding. Throughout the prior hearing Chicago Heights took the position that it was entitled to the same rates as applied within the Chicago switching district. (Tr. 3063.)

For that reason, and because those interests have interposed no objection to the evidence which has been received at the further hearings with respect (Tr. 3063) to Chicago Heights, and assume they desire to be governed by the Chicago district rates. Mr. Walter can speak for Chicago

heights, or Mr. Pierce. I would like to have them make a statement so that the record would be clear on that point.

Mr. Pierce: Mr. Examiner, we do not understand that the question of relationship of rates between Chicago Heights and the district is involved in this case; and our position is the same as it was in the former case. Does that answer your question?

Examiner Faul: Well, in the former case I understood you desired to stand or fall with the rates which would be prescribed within the district.

Mr. Pierce: That is our position now.

Examiner: And therefore you will raise no technical objection to Chicago Heights being considered in connection with these further hearings. Is that correct?

Mr. Pierce: That is right. (Tr. 3064.)

Mr. Walter: Mr. Examiner, I move to strike from the record Exhibits 101 to 110 inclusive and the testimony in relation thereto, for the reason that the details upon which the exhibits are based, particularly those that deal with [fol. 1355] the study in November, 1931 (Tr. 3064), and January, 1932, have not been available for our examination or criticism in any way, nor is there any tariff reference as to the rates, as required by the rules of the Commission. (Tr. 3065.)

Mr. Shafer: In behalf of the Illinois Commission I wish to join in the motion.

Mr. Davis: This is the first information — had that there was a desire to study the work sheets. They have been in the office and ready for perusal any time they wanted them, and I so advised Mr. Walter when he wrote about wanting access to the underlying work sheets in the cost study in 1927 and cars that moved in 1926.

I said if any exhibit we introduced was based upon working sheets, that he would be given the privilege of examining those sheets at the proper time when called for, or words to that effect. This is the first time he has intimated any desire.

Mr. Walter: Early in this case I asked for access to the working sheets of the exhibits of the carriers offered in this case. If they now say we can have access to them for such purposes as we desire, that is satisfactory.

Mr. Davis: We have the working sheets for those studies, November, 1931, and January, 1932; those are in Mr. Viv-

ian's office and whenever the shippers want to send anyone there to examine them, study them or work on them (Tr. 3065), they are privileged to do so.

Mr. Walter: All right.

Examiner Faul: Do you withdraw your motion, then, Mr. Walter?

Mr. Walter: So far as these two exhibits are concerned, and so far as the motion is predicated on the plan to give us access to the papers was concerned; but I still stand [fol. 1356] on the exceptions so far as they are based on anything which are not in the cost study, the revenue study of 1927 and 1926 and the failure to comply with the rules as to tariff references (Tr. 3066); wherever rates are referred to in the exhibit there should be tariff reference so we can verify the rate.

Examiner Faul: The examiners have requested the carriers to give us a corrected Exhibit No. 101, and assume that they can furnish that exhibit within ten days from the close of the hearings.

Mr. Davis: I want a clear understanding of that, because Exhibits numbered 99 and 100 are the ones based upon September, 1926, simply bringing that exhibit 11-A down to date. There are not any rates mentioned there, it is revenue all the way through. I do not know whether Mr. Walter has reference to revenue in using that as rates; I do not know. Exhibit No. 101 covers November, 1931, and I do not think any rates are shown. Mr. Vivian explained on what the revenue was based, based on the Commission's 3 cents, 3½ and 4 cents.

Mr. Walter: No, on present revenue. (Tr. 3067.)

Mr. J. S. Brown: Some of these exhibits are combination rates. We cannot tell how they are made up. We would like tariff references to them. I cannot check them, in either Exhibit 101 or Exhibit 103.

Mr. Davis: What they desire now, as I understand, is the tariff references to the rates that produced the revenue that is shown in the exhibit.

Examiner Faul: Yes, and also, Mr. Davis, the recapitulation showing what the estimated annual net loss would be by the elimination of those particular items that were questioned in the prior sessions.

Mr. Davis: That is being worked on, of course. In regard to the tariff references is what I was wondering about, [fol. 1357] and what it is they want shown. (Tr. 3067.)

Examiner Faul: Could you submit the tariff references at the same time when the corrected exhibit is submitted?

Mr. Davis: As far as the two-line and three-line hauls are concerned, I suppose we could work that up readily, because that is in Galligan's tariff; but as to single-line rates, those are in each of the 35 different roads that serve the district and may not be in one tariff of each of those roads, but may be in different tariffs of the roads. It will take some time to work that up.

Mr. J. S. Brown: Mr. Davis, the so-called Galligan tariff would not cover combination rates on grain.

Mr. Walter: Mr. Examiner, I move that each respondent that is a party to joint through rates with the Elgin, Joliet & Eastern, now moving on the switching rates, shall file a statement showing, for the period covered from December 10, 1931, to March 31, 1932, the difference in revenue between that actually received under the rates as reduced, and what it would have been had the line-haul rates remained in effect; and second, that the Elgin, Joliet & Eastern Railway Company show reduction in revenue which has resulted from the establishment of the switching rates in lieu of line-haul rates, and the amount of the saving which has accrued to its shippers (Tr. 3068) by reason of the fact that no 10 per cent increase was applied on the switching rates.

Examiner Faul: There was no change in the service rendered subsequent to the reduction, is that correct, Mr. Davis? In other words, they were line-haul rates prior to the reduction, and they are still designated line-haul rates.

Mr. Davis: Well, there has been so much smoke in regard to the Elgin, Joliet & Eastern Railway here that I have asked their vice president in charge of traffic to put in some rebuttal on some of those questions you have [fol. 1358] raised, and I suggest when he is on the stand that you will learn all about those changes that were made and the reasons for them. (Tr. 3069.)

Examiner Faul: We will withhold ruling on the motion until after the witness of the Elgin, Joliet & Eastern testifies. In order that the record may be clear, the examiners request that the carriers endeavor to furnish the tariff references referred to and the corrected statements with

respect to the exhibits referred to, within the fifteen days from the close of this hearing.

Mr. Walter: We rest. (Tr. 3070.)

T. E. Bond was duly sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am vice president of the Elgin, Joliet & Eastern Railway Company, and have been connected with that road for 24 years in its traffic department; am familiar with traffic on that line. The rates in the Calumet district, Chicago district, were changed on the line about December 10, 1931. A part of our road lies within the Chicago switching district, and we operate it therein. (Tr. 3071.) We serve South Chicago, Whiting, Hammond, East Chicago, Indiana Harbor, and Buffington, all being points within the Chicago switching district. (Tr. 3072.) At Gary, Indiana, we have a yard known as the Kirk yard, that serves the entire district. It is partly in the geographical limits of the so-called Chicago district. Rates from Buffington were reduced in the order of the Commission in Docket 19610. (Tr. 3072.) Rates from that point were higher on cement, being the only commodity produced at Buffington, than on any other commodity in the Chicago district. They were 5 [fol. 1359] cents for single-line haul, with varying rates ranging from 6½ cents up for two-line hauls. They were reduced in accordance with the decision, to 3 cents for single-line, 3½ cents for two-line and 4 cents for three-line hauls. The Buffington cement rates have grown up until they reached the basis existing prior to the time we put in these Chicago district rates. Originally they were 2 cents in the district for single-line hauls and combination rates on other hauls, which was during production of cement in South Chicago as well as Buffington. On August 1, 1911, the 3-cent rate applied to single-line industries; on June 25, 1918, cement was advanced 2 cents per hundred under General Order 28, and September 2, 1920, there was a 30 per cent advance under Ex Parte 70, which brought the rate to 6½ cents. December 15, 1920, it was corrected to 40 per cent under Ex Parte 74, making it 7 cents, followed

by a 10 per cent reduction, bringing it to 6½ cents. On December 10, 1931, we made the rate, 3, 3½ and 4 cents, which is the basis prescribed by the Commission for all commodities moving in the Chicago district. (Tr. 3073.) The rates on practically all commodities moving prior to this order were 3 cents for single-line hauls and 5 cents for joint line hauls, whether two or three lines. There was some exception to the single-line haul rates, wherein 3 cents was made 60 cents a gross ton on certain commodities such as waste materials, slag, cinders, etc. These were all changed to a uniform basis, 3 cents for single, 3½ cents for two, and 4 cents for three-line hauls, effective December 10th and applied to interstate traffic. The minimum was advanced to a uniform minimum of 60,000 pounds. In fact, whenever it was a change, I think it was an increase. (Tr. 3074.) If there was any intimidation used in making these [fol. 1359a] rates via the Elgin, Joliet & Eastern it was on the part of the Interstate Commerce Commission in making the order. I do not think we could have done anything else but put the rates in. The rates were put up in the regular way. The situation was explained to the connections and they concurred in it. The Interstate Commerce Commission has of course prescribed a number of scales of line-haul rates applicable to and from points in the Chicago district.

Mr. Davis: Suppose you give us some of those rates in regard to 5, 10, 15, 20, 30 and 50 miles.

Mr. Walter: I submit this is not rebuttal of anything that has been offered in this case. We presented no statement of rates at all. I object to it is not being proper rebuttal.

[fol. 1360] Examiner Faul (Tr. 3077): What do you intend to prove by this question?

Mr. Davis: I want to show what the rates are that have been established by this Commission or by the Illinois or Indiana Commission, to rebut any testimony that either of the state Commissions put in that the state rates are reasonable.

[fol. 1361] Examiner Wilbur: The witness may answer.

The Witness: We have selected a few samples, coke rates prescribed by the Commission in the Indiana Coke & Gas Company v. Ahnapee & Western, 155 I. C. C. 70, scale for 5 miles, 90 cents.

Mr. Walter: Just a minute; I object, Mr. Examiner; that is no answer to anything that has been put in this record. It is not rebuttal at all. He is now undertaking to make up a case which he realizes he has failed to make on his direct. It is too late to get it in. (Tr. 3077.)

Mr. Shafer: Furthermore I do not see what bearing the mere showing of line-haul rates can have in connection with these switching rates.

Examiner Faul: The motion is overruled. The witness may answer.

Mr. Walker: Exception.

Examiner Faul: It will be noted.

The Witness: In that case the rate prescribed for 5 miles is 90 cents a ton; 20 miles, $1.00 a ton; 30, $1.10; 50 miles, $1.30. In Atlas Portland Cement Company v. Chi- [fol. 1362] cago, Burlington & Quincy, 81 I. C. C. 1, the Commission prescribed a rate for 5 miles of 6½ cents; 20 miles, 7 cents; 30 miles, 7½ cents; 50 miles, 8 cents. (Tr. 3078.) These cases I am citing refer to Chicago. Sand and gravel was not in this territory. The rates on iron and steel prescribed by the Commission in Docket No. 17000, part 6, for interstate application were for 5 miles and under, 6 cents; 20 miles, 8 cents; 30 miles, 9 cents; 50 miles, 11 cents; and the scale approved by the Illinois Commission on the same articles intrastate in Illinois was for 5 miles, 6 cents, 20 miles, 8 cents; 30 miles, 9 cents; 50 miles, 11 cents. The so-called Pennsylvania scale applied by carriers in Central Freight Association territory after the decision of the Commission in Docket 17000, part 6, starts with 3 cents for 5 miles or under; 5¼ cents for 20 miles; 6½ cents for 30 miles; 9½ cents for 50 miles. Fifth class rates in the Eastern class scale case prescribed by the Commission, I. C. C. Docket 15879, were 5 miles, 11 cents; 20 miles, 12 cents; 30 miles, 13 cents; 50 miles, 15 cents. The sixth class rates in that proceeding were 8 cents for 5 miles; 9 cents for 20 miles; 10 cents for 30 miles (Tr. 3079); 12 cents for 50 miles. Those scales applied to and from Chicago on the commodities mentioned. Those line-haul rates cover deliveries within the district.

A switching line, in addition to the line-haul carrier making delivery in the Chicago district, out of those rates would get, for single-line, 2 cents per hundred pounds, minimum of 60,000 pounds, subject to a maximum of 50

per cent of the rate. If an intermediate line is used it gets its intermediate switching charge, which is $5.40 or $6.30, according to the line, and the terminal line gets 2 cents per hundred pounds, minimum 60,000 pounds; and in addition the terminal line is allowed approximately 5 days' [fol. 1363] reclaim; intermediate line is allowed 1 day's reclaim for the handling of the load and 1 day's reclaim for handling the empty. In addition to the division which the intermediate line gets for the handling of the load, it also gets a division for the handling of the empty, if the empty is returned to a home line or to the line that delivers it to them. (Tr. 3080.) On the switching charges the present basis for a two-line haul is 50 per cent for each line; for three lines the originating and terminating lines get 37½ per cent each and the intermediate line 25 per cent. Each line stands it own per diem while the car is on its rails. The present two-line rate on intrastate traffic is 2½ cents; on interstate it is 3½ cents, which would mean that on a 60,000-pound car moving interstate traffic over two lines, each line would get $10.50 for the 60,000 pound car. Out of that each would have to pay the per diem expenses accruing on its line. For a three-line the terminating and delivering lines would get $9.00 per car each, and the intermediate line $6.00, based on 60,000-pound minimum. (Tr. 3081.) If the car was handled in line-haul service coming to Chicago, the terminal line, if one was used, would get $12.00, or 2 cents per hundred, minimum 60,000 pounds; provided that the minimum of 50 per cent of the revenue did not come into play, which is not very often, $12.00. In addition to that it would be allowed to reclaim against the trunk line delivering the car to it for 5 days. It would have 5 days' free time to handle the car (Tr. 3081), which would be approximately $5.00. The average detention on intradistrict movement on one-line service was shown to be 6.6 days; two lines, 7½ days; so that out of whatever earnings they would get for two-line haul; you would have to deduct $7.50 from the line-haul carrier, which would be the amount it would have to pay to the owning line. There would not be a great deal left on that basis. In the two [fol. 1364] classes of service the terminal line would get a great deal more out of the line-haul business; get a greater division in cents per hundred pounds, and it would have the advantage of the reclaim; and that would be true

whether it was 2½ cents for single-line and two-line, or whether it was 3 cents and 3½ cents for the haul within the district.

We cannot move a shipment from South Chicago or Whiting in the district without moving it through the Kirk yard. All cars moving between points on the line in the district must go into Kirk yard. (Tr. 3082.) The 4th Section sets the rates at Gary. A shipment going from South Chicago to Hammond, for example, moves over our Lake Shore line into Kirk yard, and thence on the Joliet division into Hammond. Kirk yard is Gary. Both South Chicago and Hammond are without question within the limits of the Chicago district as defined by the Commission in its order, and we had to publish the district rates from South Chicago and we could not publish lower rates from South Chicago than from Gary where our road is located, without violating the 4th Section.

Cross-examination.

By Mr. Walter:

Prior to these changes we had not violated the 4th Section, because we carried the same rates. (Tr. 3083.) Our line connects with the Belt line of Chicago at South Chicago. On a two-line haul moving to the Illinois part of the district we make delivery to the Belt at South Chicago. That particular shipment would not go into Kirk yard. It is not a matter of our convenience that causes us to take shipments to Kirk yard. We could not move a shipment from South Chicago to Hammond without going through Kirk yard on a one-line move or deliver to certain con-
[fol. 1365] nections over there. (Tr. 3084.) We cut the switching rate from Gary to points within the Chicago district to the switching basis because of the 4th Section, and further because it has always been the policy of our company to carry Gary on the same basis as every other station there, no matter what the rate was. The Eastern boundary of the Chicago switching district, so far as our line is concerned, is the same now as it was prior to the decision in this case. I do not know of any change in the Chicago switching district. (Tr. 3085.) Kirk Yard is partly within the Chicago Switching District, and Kirk Yard is partly in Gary. Buffington is within the city limits

of Gary. I do not know whether you call the Indiana Steel Company in the district or not. Part of the town lies in the district, but I never heard of the Indiana Steel Company shipping anything. (Tr. 3085.) The Illinois Steel Company makes shipments from South Chicago and Gary. It has a plant at Gary that we have always considered in the Switching District and we maintained the same rates from Gary as from South Chicago. It doesn't make any difference what we call them, they were published in the local tariff. There was nothing particularly said whether they were line haul rates or not. I do not recall that we ever had the matter up in a proceeding before the commission. (Tr. 3086.) I do not recall having testified on that subject except in this particular case. We divided those rates with the Baltimore & Ohio Chicago Terminal and the Indiana Harbor Belt, on business moving from the Illinois Steel Company in the Chicago District by giving each of them 2¢ out of the rate of 5¢ and there were some rates divided 50/50 but I can't recall just what they were. The 6½¢ cement rate from Buffington, as I recall it, was divided for industrial delivery by giving terminal carriers 2¢. If team track delivery, it varied. We construed the decision [fol. 1366] of the Commission in this case as requiring the Elgin, Joliet & Eastern to reduce those rates from Gary and all points intermediate to Chicago, to the intradistrict switching basis and we made that reduction only because of the decision. I do not know that lines within the Chicago Switching District connecting with ours exactly objected to the application of the 3, 3½ and 4¢ rates in connection with our line; there were some negotiations. (Tr. 3087-3088.) I did not say there was any objection but there are always objections when you change anything. All the carriers with which we connect did not object and I do not recall those who did not object, although I can name one at least; the Monon did not, and I presume it has business to handle on that rate. It has some industries at Hammond not reached by our line. I cannot give the names of them. I do not know the name of one. I do not recall that there was any very strenuous opposition from any line with the exception of the Chicago & Northwestern we refer to. (Tr. 3089.) Originally there was, generally speaking, an objection from the line that had industries and whose revenue was reduced by the publication of these rates, but

as soon as the matter was explained to them, there was no objection; as soon as they realized the order demanded that action. I could not conceive of any other reason. There is not a bit of difference in the service we render today in handling traffic on the 3½ and 4¢ rates, and the manner in which we handled it when the traffic moved on the line haul rate, 5¢, 6½¢ or whatever it may have been on the different commodities. (Tr. 3090.)

A division of joint rates in the Chicago Switching District as between two carriers is 50/50; that is substantially the basis; there are some exceptions. The Illinois Northern, the Chicago West Pullman & Southern, and the Manu- [fol. 1367] facturers Junction do not divide on that basis. They get an arbitrary allowance. Mr. Brown advised that that is not true on intradistrict business and he is more familiar with that than I am.

Mr. Brown (Of the Belt Railway): All three points in the Chicago District are divided on the percentage Mr. Bond gave, the Illinois Northern, Manufacturers Junction and the rest. (Tr. 3091.) Out of the 7½¢ rate intrastate Illinois, between the Belt Railway and the Illinois Northern, the Illinois Northern would get 50 per cent.

The Witness (continuing): But on the line haul rates, the scale rates, that may cover these various commodities, I did not give the minimum, which is very important; minimum 60,000 pounds for the district, but when we come to line haul rates, the minimum varies between various commodities, but it does not make any difference to the switching lines. But out of the 5¢ rate or 6¢, whatever it may have been, in every case, the switching line gets less than it gets out of the intradistrict one line rate. It gets less in division. (Tr. 3092.) But the chances are the reclaim probably makes that up. It does. The minimum makes no difference to the switching lines because they get a minimum of 60,000 pounds, 2¢ minimum 60,000 pounds. The minimum on the road haul may be only 20,000 pounds or 24,000 pounds. On the scale rate for 5 miles the switching line would get 2¢ on 60,000 pounds but on the Chicago intradistrict, the intrastate switching rate of 2½¢ one line, the carrier gets 2½¢ and I would not say that the carrier is better off on the present switching basis than it is on the division of the line haul rate. The average detention

of one line car is 6.6 days in the Chicago District; as shown in the study, made in 1926, I think. I do not know, but I would say that the division today is as much as it was then, I could make a pretty good guess. As to the situation regarding divisions today, nobody else knows.

[fol. 1368] We have had a great deal of contact with the competition of trucks. (Tr. 3094.) No carrier has, to my knowledge, published any rates to compete with trucks. I do not think they need to. I think these rates are low enough to compete with trucks. We found it so. We took cement away from the trucks. I mean the 3, 3½ and 4¢ rates. We took cement away from the trucks because the railroads reduced their rates, but it was not meeting any truck rate. It was establishing the general basis prescribed by the Commission for all commodities. The reduction was from 5¢ to 3¢ for single line haul; 6½¢ to 3½¢ or 4¢ for joint hauls which was sufficient to send a considerable tonnage back to the rails. (Tr. 3095.)

I do not know the selling basis of cement. We never tried to meet competition of the trucks. The reduction was not made in order to get cement back to the rails but it did have that effect. Aside from the matter of cement, I do not know of any other reductions in switching rates that has resulted in taking away business from the trucks. We never lost any particular business to the trucks in the Chicago District except cement, and we lost substantially and practically all of that. (Tr. 3096.) We have industries on our line that own their own plant tracks; a good many of them and in numbers, I would say most of them. The Illinois Steel Company's tracks at the Gary plant are furnished by the Elgin, Joliet & Eastern. They are not maintained out of these rates of 3, 3½ and 4¢. We perform intraplant switching there from which we derive very substantial revenues, ranging from $5.00 to $20.00 per car. The $5.00 service is the ordinary intraplant movement from one place in the plant to another. It runs up as high as $20.00 because we have 40¢ down to the docks on finished iron and steel articles, minimum 60,000 pounds, but it loads much heavier than that. (Tr. 3097-3098.) This 2¢ per [fol. 1369] hundred is intraplant service. I could not give the maximum and minimum intraplant hauls. They vary however. There is quite a lot of track in that plant and I should say the maximum haul was possibly 2 miles. The

Standard Oil Co., the National Tube Co., and the American Bridge Co., serviced by our line own their respective industry tracks and each performs its own intraplant switching. There is no analogy between the 2 situations. The one where we furnish the tracks and perform the service at 2¢ per hundred and where the industry furnishes its own tracks, its engines and performs the service. (Tr. 3098.) We do the work in the plant for the 2¢ I am talking about. We do not do the work in the Standard Oil and the National Tube Company plants and I do not know whether or not they are able to do that for as little as 2¢ per hundred. The Standard Oil plant I referred to is the Whiting refinery. I have heard about truck competition with rail movement from that plant for line haul. On line haul business we made some rates to meet truck competition, the exact scale I have forgotten; but it was a scale which after consultation with the oil people was considered sufficiently low to take the business back to the rails. (Tr. 3099.) There is a one line haul from the Whiting Refinery to a point within the Chicago District, via our line and there would be a movement. So far as I know, we are getting that business moving at 3¢ between Whiting and Gary. I suppose there is a switching movement on the 3¢ rate from Whiting to Gary but Mr. Holland shakes his head. There is a movement there, whatever you may call it and the rate is 3¢, minimum weight 60,000 pounds. We have rates less than 3¢ one line on our road both in Indiana and in Illinois, (Tr. 3100) but we do not have an interstate rate less than 3¢ that I know of. Our rate from Joliet to the district on iron and steel is 10¢, 40,000 pounds minimum and we have rates less than [fol. 1370] that to points within the Chicago District. There are some rates as low as 65¢ for a single line haul from Joliet applying on crushed stone, gravel; billets, I think, about 70¢. (Tr. 3101.) I am not sure that we have rates less than 70¢. The Commission made an iron and steel scale and the minimum distance was 6¢ per hundred, minimum weight 40,000 pounds, which rate applied from station to station. (Tr. 3102.).

This scale has been modified for general use in Central Freight Association territory, and as I understand, is now

3¢ for 5 miles, 3¾¢ for 10 miles and over 5. It is what they call the Pennsylvania scale and was prescribed by the Pennsylvania Commission. The minimum rate in this scale for Central Freight Association territory is 3¢ up to 5 miles, effective November 10, 1931, in supplement 35, agent Jones Tariff, I. C. C., No. 2262, and the routing instructions permit the 3¢ rate to apply over roads that are respondents in this case, except the Pennsylvania, for a distance not in excess of 9 miles where the route is circuitous. (Tr. 3103-3104.) Prior to the decision of the Commission in this case, Whiting on our line so far as our tariffs were concerned, was in the Chicago Switching District. At that time the rate from Whiting to Gary on gasoline was 3¢. From Whiting into the Chicago District, 2½¢ but we published a rate of 3¢ and we did not maintain it on the Chicago Switching District basis; none of them were. In the previous hearing in this case in 1928, I said in my opinion this was all line haul business, not only our business but everyone's and that opinion has not practically changed. The Elgin, Joliet & Eastern is not now a member of the Chicago Switching Committee and it never has been. I do not know what committees are handling this case. (Tr. 3105.) I think they have a traffic committee, [fol. 1371] law committee and accounting committee. Although we are not a switching line, we happen to be a member of the committee representing the switching lines because our rates happened to be in question; at least so I have heard that they were.

Mr. Walter: That is all.

The Witness (continuing): You have not asked me your regular question and I was just going to say the United States Steel Corporation owns the stock of the Elgin, Joliet & Eastern Railway, you always ask me that. (Tr. 3106.)

Cross-examination.

By Mr. Shaffer:

I did not say that a scale of rates was prescribed by the Illinois Commerce Commission on coke. I said interstate Commerce Commission; and the rates I said were prescribed by the Illinois Commerce Commisison were some rates on iron and steel where that Commission adopted the

Docket No. 15110 scale for intrastate application. I did not say that the class rates referred to were adopted on state traffic, I said they were interstate rates. I cannot state the minimum weight in connection with coke rates. The minimum under steel rates on intrastate traffic is 36,000 pounds and on interstate traffic, 40,000 pounds. Under the 3¢ industrial rate for 5 miles, I think the minimum is 40,000 pounds but am not sure. If that is the correct minimum rate, the minimum car charge would be $12.00 (Tr. 3107.) But there is not much steel that moves at 40,000 pounds and I don't suppose there is much coke moving on the industrial rate of 90¢ per ton and I do not know of any movement around here. I did not say the coke rates prescribed by the Interstate Commerce Commission had been applied in Indiana, (Tr. 3108) and think that is also true as to the class rates; and the iron and steel rates pre-[fol. 1372] scribed by the Interstate Commerce Commission have been permanently suspended by the Indiana Commission and so far I know, it did not establish any scale and the group basis still remains in effect. The Elgin, Joliet & Eastern does not handle grain between points in the Chicago District that I know of. (Tr. 3109.)

R. L. WILLIAMS was duly sworn and testified as follows:

Direct examination.

By Mr. Davis:

I reside in Chicago and am assistant to the President of the Chicago & Eastern Illinois Railway (Tr. 3109) which serves Evansville, Indiana. I prepared the cost study in the switching case at Evansville to which Mr. Livinghouse referred when he was on the stand. The study conducted in 1928 and introduced in the Federal Court produced a cost of $7.90 per loaded car. (Tr. 3110.) There was a cost study made that involved 1931 but it was made before the case went to the master; before the hearing started. The cost study in 1931 produced a cost per loaded car of $12.17. In dealing with the cost study of 1928, and the one in 1931, the Public Service Commission of Indiana employed a firm of public accountants of Indianapolis and they had a new valuation made of the facilities used in switching opera-

tions in Evansville, which is substantially different from the valuation found to be correct by the railroads. These certified public accountants took the figures the Railway Company developed in 1928 and placed different interpretations on those figures and used in addition, the valuation that the Public Service Engineers developed, and arrived at a cost in 1928 of $4.31 per loaded car. They did not make any effort to restate the figures from the study introduced in 1931. (Tr. 3011.) If they made such effort, they [fol. 1373] did not introduce it in evidence in the case. I adopted their formula and valuation and applied it to the study which I conducted in 1931 and produced a cost of $7.46 per load, as contrasted with the one they worked out in 1928 of $4.81. (Tr. 3112.)

Cross-examination.

By Mr. Livinghouse:

In 1928, in the suspension proceedings before the Indiana Commission, the original case, our cost study showed $7.25 per car then we reworked the same figures before the Vanderburg Superior Court, and produced a per car cost of $7.08. The $7.90 cost was before the Federal Court. The per car cost of $12.17, I testified about, was the 1931 cost that we submitted at that time to the Federal Court. That was the 1931 study introduced in that court, and in that study there were certain minor items not shown in the original study before the Commission or before the Vanderburg Superior Court. (Tr. 3113.) In the last study, the items of cost were applied to an entirely different number of hours than the items of cost were applied to in the original study; 3 years intervened there.

In using the Commission's formula and valuation, the $12.17 per car cost become $7.46. I did not testify in that case that the exhibit showed that the 1931 cost study was not representative of normal conditions but I said it was representative of the period during which the study was made. I do not recall stating that it would not represent normal conditions. I hope it did not, it was in excess of normal conditions which has since developed. (Tr. 3114.) It is my understanding that the Indiana Commission did not make a cost study of its own either before the Vanderburg Superior Court or at the time of the suspension pro-

ceedings. (Tr. 3114.) It did not introduce it in evidence if it did. The cost study introduced by the Public Service [fol. 1374] Commission before the Special Master showed total operating cost to be $4.28 per loaded car and total cost including interest charges $4.81 per loaded car; that was on the basis of 1928 costs. The Commission's cost study in the Federal Court showed a smaller cost than that developed by the railway company.

Redirect examination.

By Mr. Davis:

In regard to the elements referred to by Mr. Livinghouse that were in our 1931 study and not in our 1928 study, they had no material bearing on the difference between the $7.90 cost in the 1928 study and $12.17 of the 1931 study. The factor causing the difference between $7.90 in 1928 and $12.17 in 1931, I understand was due to decreased volume. (Tr. 3115.)

Cross-examination.

By Mr. Walter:

We had to maintain a certain number of engines to handle the business offered and could not reduce engine hours the same ratio that the business decreased. I do not think the unit base of cost would have remained the same if we could have made a reduction in engine hours that would keep pace with reduced traffic because engine hour cost would go up. Engine hour cost did not go down because engine hours went down. Certain fixed charges that enter into engine hour costs are the same, regardless of the number of engine hours worked. If the volume in 1931 had been the same as in 1928, I think the cost would have been substantially the same. There has been a temporary reduction of 10 per cent in labor costs (Tr. 3116) which I understand will last for a year.

Recross-examination.

By Mr. Livinghouse.

There was some controversy between the Indiana Commission and our company as to the number of cars under

which the switching charge in Evansville should be made. The Indiana Commission contend- for one number of cars [fol. 1375] to be used in the Evansville study and the Railway a different number. That made the entire difference between the Commission's study and the study introduced by the railway in that case. In other words, that was the difference between $7.90 and $4.81, possibly including certain cars that were not involved, which the railway company contended should not be included and the Commission contended they should be. I am not at all familiar with this case. There wasn't any difficulty in trying to determine cost of handling cars in the switching district in the Evansville case. (Tr. 3117.) We had the cars eliminated to which the rates did not apply.

R. A. BARLOW, recalled, testified as follows:

Direct examination.

By Mr. Davis:

Was previously sworn and testified in this hearing.

When a loaded car moves between two industries, both located within the Chicago Switching District, via one line, the empty is taken from the storage or classification yard, to the shipper industry where plant service is performed. (Tr. 3119.) I was speaking of a one line haul when I started. (Tr. 3122.) But taking the Standard Oil Co., on our line, we do not perform service at their plant, it does it with its own engine; (Tr. 3122) but we take it to the place where we interchange with the Standard Oil. (Tr. 3123.)

Taking the Graver Junk Works at East Chicago, we handle the empty from our yard to the plant. The plant switching is then done; after the car is loaded it is taken from the industry back to the yard. If it was consigned to an industry at Harvey, say Bliss & Loughlin, the car is handled from the yard to the industry. After being un- [fol. 1376] loaded, the empty is handled in the return movement through the yard and back to the storage yard. (Tr. 3123-3124.) After loading at the industry it is first taken to the yard; back to the base yard and handled from there to the industry. But if we got that car in road haul move-

ment destined to that industry via our line in that case, the road haul carrier would deliver the car to the base yard and we would handle the load from there to the industry and the empty back to the base yard for the return movement to the originating yard. There is a great deal more service in the car going between two systems than in the line haul movement which would also be true of a two or a three line haul. In anyone of these cases there is this one additional industry service; (Tr. 3124-3125) that is involved in the intradistrict movement as compared with a road haul. (Tr. 3125.)

Cross-examination.

By Mr. Walter:

On a car originating at the Graver Junk Works, at Graver, destined to a point on the Chicago, Milwaukee, St. Paul and Pacific Railroad, the Baltimore & Ohio, Chicago Terminal, would deliver that car to the Chicago Milwaukee & St. Paul at Western Avenue yard. If this car was destined to an industry on the Chicago, Milwaukee & St. Paul in the district, and there was another car from the same point destined to St. Paul, Minnesota on the Chicago, Milwaukee St. Paul & Pacific, the service of the Baltimore & Ohio Chicago Terminal would be the same in every case. If one car coming from an industry on the Chicago, Milwaukee & St. Paul in the district and one came from St. Paul, via that line, both destined to Graver, we would get each car at the same place and would make the same moves and perform the same service on each of the 2 cars, so far as the Baltimore & Ohio Chicago Terminal is concerned.

If the Baltimore & Ohio should bring a car from Wash- [fol. 1377] ington, D. C., destined to an industry on the Chicago, Milwaukee & St. Paul in the district, and another destined to a point on the Chicago, Milwaukee & St. Paul, outside the district and our line delivered the cars from the Baltimore & Ohio railroad to the Chicago, Milwaukee & St. Paul, the latter would receive the 2 cars at the same interchange and perform the same service on the 2 cars in the district. (Tr. 3126.)

The Chicago, Milwaukee & St. Paul Railroad moving cars from an industry in the district one destined to a point

in the district and one destined to Baltimore, the service of the Milwaukee on the 2 cars in the district would be the same. (Tr. 3126-3127.)

Redirect examination.

By Mr. Davis:

But when you connect up the two there is one additional service in the district, as compared with the road haul.

Recross-examination.

By Mr. Walter:

With three lines involved the intermediate service would be the same, but each line performing the service at either end, origin or destination, there is more work. Assuming that two cars originating on the Illinois Northern are interchanged with the Chicago, Milwaukee & St. Paul and by the latter delivered to us, and one car is destined to a point in the district on our line and one is destined to Baltimore, the service of the two lines up to the delivery to us is the same in each instance, but the service of the Baltimore & Ohio Chicago Terminal is not the same in each case. (Tr. 3128.) Taking a movement of two cars in the reverse direction, one coming from Baltimore over the Baltimore & Ohio to our line, and one from an industry on that line, we would deliver both to the same point of interchange with the Chi- [fol. 1378] cago, Milwaukee & St. Paul, and that road (Tr. 3128) would deliver the cars to the Illinois Northern and the latter would deliver them to the industry on its rails. The service of the Illinois Northern would be identical on the two cars if both were going to an industry. Where there is a one-line haul that carrier performs both terminal services, and that may be done without going through any intermediate yard; and in the other illustrations that may move through three or four yards. (Tr. 3129.) That is also true in connection with line-haul movements. There may be in line-haul movement a movement through several yards or only one on the terminating line. The same base yard may serve both and that may apply on an intradistrict car, too. (Tr. 3129.) I would not say that because of a wide variety of service performed for two lines in the district, that a mere statement saying two lines versus one

line does not mean anything. It is all according to the origin and the destination of the shipment. (Tr. 3129.) As far as intermediate yards are concerned, you have to consider the identical cars and follow them over the various routes before comparing one route as against the other, and that applies for both kinds of shipments, either from an industry or line haul. There may be a vast difference between the cost of handling a particular car moving via two lines or via one line. But whether we have one, two or three or more lines handling industrial switching in the district, that traffic requires one more terminal service than the movement in connection with road haul. (Tr. 3130.) But it is also true that it may have a great many less intermediate services; and that may apply to either. (Tr. 3130-3131.)

Cross-examination.

By Mr. Shafer:

In handling the movement of a car between one industry [Vol. 1379] and another on our line, the first movement we make is to take the empty car from the classification yard and place it at the industry making the shipment; but that car might already be at the industry, and if it was there would not be that movement. I said it would be necessary to take that car from the industry back to the yard, but we might apply it on another assignment. Ordinarily we keep the empties in the yard where they are stored, and when we get an order for an empty it is supplied from there to the industry. I thought you were speaking of the empty. (Tr. 3131-3132.) But as to the load, that might go across the street. After it is delivered to the industry at destination I said the unloaded empty car would be handled back to the yard. But as a matter of fact there are occasions when that might be reloaded out of the same plant, in which instance it would not be necessary to move the car back to the yard; and those things apply whether it is road haul or switching district traffic or whether the movement is interstate or intrastate. There are a number of instances where the car is loaded out, that is, made empty at the industry. It happens occasionally, and vice versa. (Tr. 3132.) I would not say that as to some industries the percentage of outbound loading from cars already made empty at the industry would be high. (Tr. 3133.)

J. E. PIERCE recalled as a witness.

Direct examination.

By Mr. Cardy:

Am the same Pierce who testified this morning in Docket 19610. Answering the inquiry made this morning by the [fol. 1380] examiner I find the maximum haul for truck in the Chicago district is 17 miles, and that point is Chicago Avenue, just north of the Loop. The average trucking cost is $1.00 a ton. The University of Chicago has a track connection as shown in Galligan's list of industries in the Chicago district. The University of Chicago is the only point I showed on the map to which we truck coal from South Chicago. That map, Exhibit No. 119, indicated individual tonnages to plants, but as I explained, last year we trucked approximately 150,000 tons to various points around Chicago. The trucks moved back empty, but the figures I have given provide for 10-ton loads. (Tr. 3134.) As to the inquiry of Mr. Davis regarding the amount of bunker coal we furnished from our docks, I find our records show approximately 25 per cent furnished for 1931, and so far this year about 10 per cent. That is, those percentages apply to the total business we had there at the docks. Ten per cent today is bunker coal. (Tr. 3135.)

Cross-examination.

By Mr. Davis:

We make delivery by truck from the different distributing yards. The distributing yards have been open only about 8 months, and we distribute to the territory adjacent to them. The heavy tonnage still moves from the dock, because we are trying to use our dock facilities. The $1.00 per ton for trucking does not apply to sales to the householder. That is handled a little different. We do not use our own trucks from those yards. They are under contract or lease to handle that business for our company. (Tr. 3135.)

Examiner Faul: We will adjourn until 9 o'clock tomorrow morning, May 10, 1932. (Tr. 3136.)

Hearing reconvened at Chicago, Illinois, May 10, 1932, [fol. 1381] at 9 o'clock A. M.

G. F. VIVIAN recalled as a witness:

Direct examination.

By Mr. Davis:

I have testified previously in this proceeding. (Tr. 3137.) Mr. Brown of the Board of Trade first raised the question in regard to 67 cars of grain or grain products shown on page 2 line 1, of Exhibit 101. The 67 cars and that particular page are the recapitulation of the underlying details. The 67 cars are divided into 3 items shown on page 5 of the same exhibit, and Mr. Brown asked for an explanation of 62 cars shown on page 5. Those cars moved from elevator D to elevator C on 4 different days during the test period of November 9th to 15th. To move from elevator D to elevator C it is necessary to use a switch lead operated jointly by the Belt Railway of Chicago and the Chicago, Rock Island & Pacific Railway. This switch lead serves various industries besides the two elevators in question. (Tr. 3138.)

Cross-examination.

By Mr. J. S. Brown:

The 67 cars mentioned by you are shown in the first 3 lines of page 5, of which I have given you the movements of 62. (Tr. 3138.) In showing a charge of $3.60 for each of the 67 cars I show 2 cars on page 5 at $4.95, 3 at $12.00 and 62 at $3.15. The charge of $3.60 on page 2 is the weighted average; and to get that you add the revenues of the 67 cars and divide by that number. I could not give the tariff references for the 67 cars on page 2 because it is the composite. I know the movement between elevators D and C is open under the tariffs, and I presume the pub- [fol. 1382] lication of the rate of $3.15 per car by the Rock Island was as a special movement, but do not know what the underlying motive was. (Tr. 3139.) It is not specifically in the tariff as an interplant movement.

Mr. Brown: I move reference to these particular 62 cars be stricken. Intraplant movements are not in issue. I also

move that the 67 cars on page 2, showing the composite rate of $3.15, be stricken, because it is not the published rate in any tariff. (Tr. 3140.)

Examiner Faul: The motion is overruled.

Mr. Brown: We take exception to that. (Tr. 3141.)

Cross-examination.

By Mr. Walter:

There are no intraplant movements included in any of my exhibits. I did not call this grain movement intraplant because it is not, and it is not an interplant movement. (Tr. 3141.) As to the Chicago Junction, that applies to interplant movement only to the extent it is interdistrict. (Tr. 3142.) There are no Chicago Junction one-line haul figures shown any place in Exhibits 101 to 106. The Chicago Junction figures are shown in Exhibit 99 only, and no intraplant movements are shown in those exhibits, to my knowledge. I would say none were included for the reason that my recollection of that study at the time I handled it is that we were careful to exclude the intraplant movements. (Tr. 3142.) These are not the September figures; these were taken from Exhibit 101, and the 62 cars on sheet 5 are included with the 67 on sheet 2. Page 2 is a recapitulation of the underlying details. (Tr. 3143.)

Mr. Walter: Aren't we entitled to have the details of the movement of each one of these cars, point of origin and the destination in the district?

Examiner Faul: I think Mr. Davis offered yesterday [fol. 1383] afternoon to give you access to the working papers.

Mr. Davis: Yes. (Tr. 3143.) I said I had written to the Commission to that effect in regard to the exhibits that had the underlying data that would be offered.

Mr. Brown: That does not satisfy me.

Examiner Faul: In other words, in addition to the revenue, you desire to have the specific rates that were used in arriving at these movements.

Mr. Walter: Each movement.

Mr. Davis: We were to furnish tariff references, which we are going to do in the exhibit. The witness has said that page 2 is a composite and the basis for it is shown on the other pages of the exhibit. I do not see what could be clearer. (Tr. 3145.)

Recross-examination.

By Mr. Brown:

I could not say how many of these cars were moved more than once the same day. I have not checked it up. (Tr. 3145.) In the cars that moved on the four-dollar days there may be some that repeated, but I wish to emphasize the fact that it is not an intraplant movement.

Mr. Walter: We renew our request for detailed showing of each of the 1592 cars in the exhibit.

Mr. Davis: We have offered to let them go through the work sheets and work out anything they want. I do not think we should be put to that expense.

Examiner Faul: How long would it take? (Tr. 3146.)

Mr. Davis: It would take thirty days, considering the work we have ahead of us. We have several other cases waiting until I can get out of this one. I have to be in San Francisco on June 1st in the deciduous fruit case.

The Witness: I would say that to gather that informa- [fol. 1384] tion will require from 3 to 4 months' time on these two-weeks periods. We haven't any information on the movement of the car other than the fact we know the billing reference, which day it did move and the car initial and number, and the other information is shown on these exhibits. (Tr. 3147.) We do not know the engine that handled it or the time of day it was delivered from the plant. We have the routing.

Examiner Faul: The exhibits show the present and proposed revenues. In addition to that, the carriers have asked to give us corrected exhibits eliminating the exceptions. In addition they are going to give us complete tariff references, and in view of these facts and the fact it would take 3 or 4 months to give us the additional information the examiners will not require the case be delayed to that extent, and we overrule the motion. (Tr. 3148.)

Mr. Walter: It could not take 3 or 4 months. This was November 9th to 15th when the movement took place, and all of the examination and accumulation and tabulating of bills with that operation and all of that work that Mr. Vivian has had to do has been performed in that time. (Tr. 3148.) It cannot take 3 or 4 months. To enlarge upon

the expense and difficulty in order to prevent furnishing the information seems to me ought not to be encouraged by the Commission. We except to the ruling.

Cross-examination.

By Mr. Brown, continuing:

In making up Exhibits 101 to 103 the individual railroads furnished the individual slips containing the information, but did not make up the averages of revenue. I made that up myself.

Mr. Brown: So you mixed the intraplant—what I call intraplant, and I claim you have no right to say to the Rock [fol. 1385] Island that it is not intraplant movements—so you mixed up the intraplant with purely one-line industrial movements to get at the average which no one could get until they got your separation?

The Witness: I did not.

Mr. Brown: I maintain that no exhibit should be furnished that could not be properly explained and check by tariff reference.

Mr. Walter: I think it is only fair to warn these respondents that we shall insist in every form this case goes to that we are entitled to this disclosure. We request it.

Examiner Faul: The examiners have ruled on the point.

Mr. Walter: Exception.

Redirect examination.

By Mr. Davis:

There is a concern known as the Keeshin Motor Express Co., that files tariffs with the Illinois Commerce Commission in regard to its rates and I have its tariff No. 4 filed with that Commission, from which I have made a computation in regard to trucking rates for distances of from 10, 20 and 26 miles.

Mr. Davis: What does the tariff provide in regard to the minimum or the provisions under which they are trucking? (Tr. 3150.)

Mr. Hufsmith: I object, on the ground the tariff itself would be the best evidence and there is no use reading it out of the document. (Tr. 3151.)

Examiner Faul: This is a tariff on file with the Illinois Commerce Commission.

Mr. Shaffer: It has an Illinois Commerce Commission number but has no standing with the Commission. This company has a petition on file for a certificate of convenience and necessity which has been pending 10 months and the carriers are vigorously opposing the granting of [fol. 1386] the tariff, as the company is not obliged to charge rates published therein.

Examiner Faul: In other words, the tariff is filed with the Illinois Commerce Commission as a matter of information only. (Tr. 3152.)

Mr. Shaffer: Information for the public, and they put the Illinois Commerce Commission number on the tariff but it has no standing with the Commission. They have been instructed not to issue the tariff or put a number on it until they are granted the certificate. If they are granted one as the carriers claim they should not be. (Tr. 3152.)

Mr. Davis: We want to show this Commission from the best source we can in regard to what the trucking companies hold themselves out to do with tariffs filed with regulatory bodies. We are trying to get the information as best we can.

Examiner Faul: The witness may answer. It will be received for what it is worth with the explanation that has already been given.

Mr. Walter: An exception.

The Witness continuing: Item No. 65 revised, shows as minimum rates articles provided for the 5th class car loads in current Illinois classification and current official classification will be rated at 4th class. The 4th class rate for varying distance between 5 miles and 10, 15½¢; (Tr. 3153.) Between 10 miles and 15 miles, 16¢; between 15 and 20 miles 17½¢; between 20 and 25 miles, 18½¢, and between 25 and 30 miles, 19¢, per 100 pounds. I do not know whether or not these rates are actually collected.

Mr. Hufsmith: I move the testimony be stricken out. The examiner asked a question as to whether those tariffs were applicable or not. Evidently the question here is what someone has published in an unofficial report rather [fol. 1387] than what is actually transpiring and if there is any evidence at all, I think it is evidence that has no right

to be used or considered, and I move this testimony with reference to the tariff be stricken from this record.

Examiner Faul: The tariff apparently is filed for the same purpose the boat line tariffs are filed with the shipping board. They are maximum rates and with the explanation given by the representative of the Illinois Commerce Commission.

Mr. Shaffer: I do not think that quite correctly expresses it. This company can charge higher than that if it cares to. It is under no restriction from the Illinois Commerce Commission. They are neither minimum nor maximum rates. (Tr. 3154.) They are not bound by those rates at all. It is very apparent this witness has no knowledge whether or not these rates are charged or whether there has ever been a movement in connection with any of the rates.

Mr. Hufsmith: I renew my objection. Particularly in the light that he is reading from the tariff that is not in the record.

Examiner Faul: The witness clearly stated that he did not know whether any shipments moved on these rates; simply testifying that there is a tariff on file with the Illinois Commerce Commission which names those particular rates. (Tr. 3155-3156.)

Mr. Shaffer: Mr. Examiner, I want to object to that. That tariff is not officially on file with the Illinois Commerce Commission and the carriers are so contending in other cases before our commission; and we have recognized that it has no standing. Therefore, it is not on file with the Commission. They merely arbitrarily placed an Illinois Commerce Commission number on their tariff and have been advised it has no standing.

[fol. 1388] Examiner Faul: Has it been received?

Mr. Shaffer: It has not.

Mr. Hufsmith: I renew my motion that it all be stricken out.

The Witness (continuing): This tariff carries the stamp of the Illinois Commerce Commission received October 1, 1931, sections, rates and tariffs. (Tr. 3156.)

Mr. Shaffer: Every letter received in the Illinois Commerce Commission likewise has the stamp indicating it is received. It does not have the stamp of a tariff.

Examiner Faul: As before stated, the testimony will be received for what it is worth and with this explanation.

The Witness (continuing): The tariff recites: "This Company is not a common carrier and all freight accepted is transported by contract between the company and shipper or consignee."

Chicago is not shown in the list of points between which the rates apply.

Examiner Faul: I think that is a satisfactory explanation. (Tr. 3157.)

The Witness (continuing): The railroad carriers I represent, contract for trucking betwen stations (Tr. 3157), with trucking companies. There is a contract for trucking by the Langdon Cartage Co., between Clearing and Union Street. The trucking charge is 6¢ per 100 pounds for a distance of 14½ miles with no minimum weights and that charge does not include loading and unloading. There is a contract for trucking by the same company between Clearing and Proviso with a rate of 8¢ per 100 pounds which does not include loading or unloading and covers a distance of 17 miles. (Tr. 3158.) There is also another contract between this trucking company and the carriers for [fol. 1389] trucking between Cragin and Proviso at a rate of 5¢ per 100 pounds for a distance of 10 miles. The Chicago, Milwaukee, St. Paul & Pacific has a contract with Nielson Bros., for trucking between Healy Station and Union Street, at a rate of 8¢ per 100 pounds, minimum 6,000 pounds, for a distance of 5½ miles and the loading and unloading is handled entirely by the railroads. We have another contract from Western Avenue with the same company for 6¢ per 100 pounds, minimum 6,000 pounds, distance 1¾ miles, which does not include loading and unloading (Tr. 3159.)

We have a contract with Arthur Dixon Co., between Cortland St., and Union Street Station at 6¢ per 100 pounds, minimum 6,000 pounds for a distance of 2½ miles; which does not include loading or unloading. The Chicago & Northwestern Railway has a contract with Dunn Bros. storage warehouse for trucking from Rogers Park and Wilson Ave., to Proviso for 15 and 10¢ respectively, minimum

6,000 pounds. The 10¢ covers weights in excess of 6,000 pounds. The Ruby Motor Transportation Co., gives information as to how they base their cost figures. (Tr. 3160.) The items they include are only depreciation.

Mr. Walter: Just a minute. What is this you are reading from? (Tr. 3160.)

The Witness (continuing): Motor Transportation magazine for March, 1932. That is the official organ of the Texas Bus Owners Association and the Texas Truck Owners Service Bureau.

Mr. Walter: I object to this.

The Witness (continuing): When Mr. Brown, representative of the Illinois Brick Co., was on the stand, he testified in regard to the 30½¢ per ton charge for a haul of 5 miles and I have equated that to ascertain what it would [fol. 1390] be for the average hauls in this district. For a haul of 10.53 miles, the equivalent of 1 line, the rate figures 66.3¢; for the 2 line haul or 21.12 miles (Tr. 3161), it becomes 133.1 cents; for 26.01 miles for a 3 line haul, it becomes 163.9 cents. The trucking rate of 25¢ per ton for a distance of 3.5 miles from East Chicago to the Graselli Company I have equated with these results: For the 10.53 miles, becomes 75.2¢ per ton; 21.12 miles becomes 150.9¢ per ton and the 26.01 miles becomes 185.8¢ per ton. The trucking rate of $1.00 per ton for 17 miles testified to by Mr. Pierce (Tr. 3162) when equated, for the 10.53 miles, becomes 3.1¢ per 100 pounds; 21.12 miles becomes 6.2¢ per 100 pounds, and for 26.01 miles becomes 7.6¢ per 100 pounds.

We made an effort to secure trucking charges within the Chicago District and have prepared an exhibit giving the results of that investigation.

Mr. Walter: Mr. Examiner, until there is some showing as to the authority it won't be even marked because I object to it until he has qualified it as something other than the rankest hearsay. (Tr. 3163.)

Examiner Faul: I presume the witness will testify as to the source of the information.

The Witness (continuing): In the effort to get these figures, I requested Mr. Galligan to obtain for me information

in regard to the trucking rates. He in turn was forced to call upon the individual railroads for the information and the returns which the individual railroads made are incorporated in this exhibit, and the individual truckers giving the information shown in the exhibit in some instances permitted their names to be used. In other instances, they re- [fol. 1391] quired the suppression of the name.

Mr. Walter: All that is the rankest hearsay. It is not merely direct hearsay, but it is hearsay several times removed and is the kind of hearsay that is self serving. The higher these trucking companies can get the railroads to say their charges are and the higher they can get the railroads rates, the more business they are taking from the railroads. I object to this as being hearsay, incompetent, irrelevant and immaterial. (Tr. 3165.)

Mr. Hufsmith: As to which we have a further objection but according to the witness's testimony, certain of this data is in the nature of confidential communications to them; and there is no way to check, and there is no way to disclose the source of the information. They are putting in an exhibit through a man three hands removed from the source of the information; evidence which the gentleman from which the original source of the information came cannot or would not take the stand and give the information contained in this exhibit to these examiners. (Tr. 3165.)

Mr. Walter: It is not only unlawful, illegal testimony, highly prejudicial but it is unfair.

Mr. Davis: These are actual movements within the district.

Mr. Walter: No one has said they were actual movements.

Mr. Davis: No, it is actual movements by shippers. We have the information that it is actual.

Mr. Walter: Who said it?

Mr. Davis: Well, if that is not one of the companies whose name we have had to suppress, we are willing to give it. (Tr. 3166.)

Examiner Faul: Mr. Vivian, can you identify any of the [fol. 1392] movements referred to on this exhibit? Taking the trucking company handling that exhibit.

The Witness (continuing): I may not be able to give the trucking company, but I can give a specific movement from industry to industry, on approximately half of the illus-

trations. The others, the names of the companies or the industries were suppressed. (Tr. 3167.)

Mr. Tholin: I would like to have the record show that the Illinois Commerce Commission joins in the protest against this evidence.

Examiner Faul: Mr. Davis, is Mr. Galligan available? Can he testify as to this information having been given to him first hand?

Mr. Walter: Mr. Vivian says he cannot. Mr. Galligan got it from his solicitors who were employees of the railroad who got it from someone else, who were told what someone else did. That is a fair statement of the evidence.

Mr. Davis: You have to get evidence some way or other if you are going to offer it by one witness. He has Mr. Galligan's files here. He can tell where he got the information originally which was transmitted through Mr. Galligan to Mr. Vivian.

Mr. Cardy: I think we ought to have a man that talked to the industry and got the information originally. We ought to have the man that talked to Mr. Womer and Mr. Maynard and got this information. If he tells the truth about it, all right, if he does not, we want to be here to give the commission the true facts.

Examiner Faul: Undoubtedly this is hearsay evidence and the examiners will sustain the motion. We sincerely hope the shippers, as stated a while ago, will give us the information as to the going truck rates. The Interstate Commerce Commission would like to have this information. [fol. 1393] Mr. Walter: We are going to give it to you.

Examiner Faul: So far, we have not been able to get it. (Tr. 3169.) As stated before, there was a lack of shipper evidence in this case, but I think in order that the Interstate Commerce Commission may have all facts it is very necessary that we have information showing what the going truck rates are.

Mr. Davis: I want to serve notice now, Mr. Examiner, that there will be no truck evidence offered by the shippers in the formal complaint case without my objection. It is very obvious that these shippers have not gone on the stand in the 13th Section case because they do not want to be interrogated regarding discrimination. Mr. Walter is now waiting to put on his witness in the formal complaint case to bring out some alleged trucking competition and I

am going to serve notice now that I will withdraw from the agreement that I made in regard to stipulating (Tr. 3170) a part of that record into this one if he is going to insist on putting trucking evidence in the other case and expect to use it in this. (Tr. 3171.)

Examiner Faul: Under that stipulation, Mr. Davis, any information as to relationship of the truck rates to the all rail rates may be used in one case as against the other.

Mr. Davis: The purpose of tendering this exhibit is in the 13th Section case and this trucking evidence is proper in a 13th Section case.

Examiner Faul: The Interstate Commerce Commission is here trying to develop the record. Now if there is any testimony in connection with the complaint case which bears on the relationship of the rail lines and truck lines under the stipulation that evidence may be used in the Section 13 case.

Mr. Davis: Have you ruled out this exhibit.

Examiner Faul: The exhibit as a whole is ruled out. [fol. 1394] If Mr. Vivian has any first hand information he can testify as to those movements.

Mr. Davis: Would that first hand information mean, Mr. Examiner, that Mr. Vivian would have to handle the truck or see the truck move?

Examiner Faul: Direct information from the truck owner, or the man who did get the charges from the truck owner. (Tr. 3172.)

Mr. Davis: That is all, Mr. Vivian.

Cross-examination.

By Mr. Walter:

I am not positive that the trucking contracts I referred to covering movements between Clearing and Union Street, Proviso, Cragin, Healy and Western Avenue, are written. I believe they are in letter form of contract, but would not say for sure. I do not have them in my possession.

Mr. Walter: We ask that they be produced so we may see the contracts.

Mr. Davis: We will furnish copies of the contracts between Langdon and those companies he named.

Mr. Walter: As to every rate that you referred to, where the railroads have the contracts, we ask that they

be furnished to us before we further examine Mr. Vivian in regard to them. (Tr. 3173.)

The Witness: I took the rate, the trucking rate testified to by Mr. Brown as 31½ cents, which I said I equated. Mr. Brown testified that the cost was based on 10-mile trips, which would mean a 5-mile haul. Ten miles is twice the 5. The 31½ cents would become 63 cents, which is an equation. It is reasonable to assume that a 20-mile haul would cost twice as much as a 10-mile trip. If it cost 31½ cents [fol. 1395] to move 10 miles, I would say it would be reasonable to assume that it cost 63 cents for 20 miles, for the simple reason that it takes twice as long to go twice the distance. There is loading and unloading at each end and handling at each end. There would not necessarily be 4 handlings in the 20 miles (Tr. 3174), but Mr. Brown was talking about tank trucks and he did not include, as I remember, in his testimony anything about loading or unloading, but gave the total cost. In Mr. Brown's cost there is $240.00 labor cost by the hour and $240.00 for maintenance. The second $240.00 is for insurance. I presume the $240.00 is the term of the insurance. (Tr. 3175.) He said per year $20.00. The $200.00 item is depreciation at 20 per cent, and which I presume is time depreciation. It is a flat rate of depreciation, apparently, and the $100.00 is return on investment at 10 per cent, and that is time, too. The total license is $240.00, and for the year $20.00. In view of the cost elements Mr. Brown showed from those figures, it is my judgment that if it cost 31½ cents for a 10-mile round trip, that it will cost 63 cents for a 20-mile round trip. If the haul was a quarter of a mile, in all probability it would be 1/20 of 31½ cents (Tr. 3176), because he could make a great many more moves per day. It would not be a proper relationship, because there is always some loss at each end. When you have more terminal moves you lose a little bit more each move. You cannot be 100 per cent efficient on that basis. I never did any trucking with sulphuric acid. I do not know the size of the opening or vent through which sulphuric acid must move in entering and leaving the tank, or how many gallons there would be in 17 tons, or the time that would elapse in loading and unloading, or how much sulphuric acid weighs per gallon. I have not testified in connection with the cost of handling rail traffic (Tr. 3177)

[fol. 1396] in this proceeding. I did testify at earlier hearings, but did not testify in connection with the cost. I have not made any comparison with what I have said as to the cost of handling sulphuric acid for 20 miles or a quarter of a mile or 10 miles, or whether it is of any greater or less value as compared with relative rail costs, because I did not testify to costs in this case. (Tr. 3178.) I have not given any costs in this case. (Tr. 3179.) What I have said regarding costs of trucking I think is a reasonable assumption from Mr. Brown's figures, to which I have referred, and that it approximates the relative cost of 10 miles and 20 miles for trucking of this particular character. (Tr. 3180.) The principle I have applied in arriving at costs for handling sulphuric acid, 20 miles, is one that cannot be applied to the handling of rail traffic in the Chicago switching district covered by the cost study of 1927, because the two are unlike in many respects. One method is by rail and the other by truck, and with all of the ramifications that go with rail movement. Both movements are on highways. A rail highway is privately owned and used by that particular railroad. Road highways are primarily built for the general public (Tr. 3181) and not for the use of industrial concerns, and trucking concerns are already breaking down the highways and requiring the construction of heavier ones to support something that they pay no income to build. I frankly admit that remark has to do both with the movement of the commodity we are talking about and the injection of a little spleen against the trucks.

In saying that I thought the principle might be applied in determining the cost of sulphuric acid but could not be applied to rail movements, one difference making the principle inapplicable to rail lines is that in one case the road highway is one of public ownership, while the rail highway is privately owned, and that is a big factor in the proper [fol. 1397] computation of trucking costs. (Tr. 3182.) I think I have already given one particular element of the accounting principles that exist with reference to cost of trucking and that does not exist in determining rail costs, but there are so many others that you would burden the record with them; when you consider all the ramifications, the rail ramifications. I have never computed the trans-

portation of gasoline or sulphuric acid by truck. (Tr. 3183.)

Mr. Davis: We will excuse Mr. Vivian with the understanding he is to come back with those two or three contracts. (Tr. 3183.)

E. F. SAUR, duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Reside in Columbus, Indiana, and am connected with the Pennsylvania Railway and have been 44 years.

Mr. Walter: We admit Mr. Saur's qualifications.

The Witness: Am the same Mr. Saur who testified in Docket 19610 in the switching rate case. (Tr. 3184.) I was chairman of the cost study committee in that case. My experience in my 44 years with the Pennsylvania has been principally in the operating department, including maintenance of way, of equipment and transportation, and have been 16 years in this kind of work. I am familiar with Chicago in regard to its railroads, its streets and its general topography, having lived here part of 1900 and 1901. I was made chairman of the cost study committee, and preceding the May hearing we had an engine and a couple of coaches and spent 3 days going over very largely the cost study lines, with very little duplicate mileage or very little mileage on other than cost study railroads. In so far as it is possible [fol. 1398] for one man to truly absorb the magnitude of this district, I consider I am more or less familiar with the transportation facilities and conditions in Chicago. Am more familiar in a similar way with St. Louis and East St. Louis. (Tr. 3185.) In the fall of 1929 in connection with I. C. C. Docket No. 19594, the St. Louis and East St. Louis railroads were practically ordered by the Interstate Commerce Commission to make a study of trucking costs, and the Commission stated it would furnish a representative to assist in the preparation of a proper formula, which was done. The formula was applied to operations of 7 trucking companies, and one of the preliminaries to that study, the committee of eight, of which I was chairman, knowing

that neither the Commission nor the railroads had jurisdiction over the accounts of the trucking companies, I personally interviewed the executives of each of them and secured a pledge as to their cooperation to the fullest extent, conditional on my not revealing to any one company the figures relating to any other trucking company. I personally made that pledge and have lived up to it and the examiners sustained my position. Only one copy was made of all the work sheets and they were kept under lock and key, and I have never disclosed—there have been three hearings in connection with the case, and I testified in two of them, and I have kept my pledge by only stating composite figures. (Tr. 3186.)

Q. What was the result of that study?

Mr. Walter: I object. (Tr. 3186.) In the first place, this is 1929. In the second place, it is in St. Louis. In the third place, as I understand it, they were trucking companies that did work for the railroads. It was a question of the lawfulness of what you do, is that right?

The Witness: That is correct.

[fol. 1399] Mr. Walter: So we have no similarity of conditions at all, plus the purpose of the cost study. There they were trying to justify an allowance, and it had nothing to do with competition with the carriers. Had nothing to do with the situation in the Chicago district, and can have no possible bearing upon what the rates are here. I repeat again, that the only and the easiest way is to call the truck men here and find out what they get for the service and what the service is. The carriers can get that, and Mr. Saur's analysis of the situation in St. Louis can only have the effect of prejudicing the minds of the Commission, which does not stop to measure the difference in circumstances and conditions between that cost study and what we are investigating here. (Tr. 3187.)

Examiner Faul: You do not mean to say the Commission would not give consideration to all facts before it?

Mr. Walter: Technically it does give consideration to all facts, but the record is so great and the work of the Commission so great that it cannot pay attention to the details.

Examiner Faul: Mr. Davis, what do you intend to show by this?

Mr. Davis: I am going to show what it actually costs to truck. Here is a gentleman who has gone through that and

made an actual cost study of what it costs to truck, and he will give you the figures on which it was based in St. Louis, and we are going to couple that up, as we have already, to show the similarity between that and later testimony of Mr. Saur between St. Louis and Chicago. (Tr. 3188.) The purpose is to show what it costs truckers to truck.

Examiner Faul: That information is now on record in connection with the Interstate Commerce Commission?

Mr. Davis: Yes.

Examiner Faul: What is that case, Mr. Saur?

[fol. 1400] The Witness (continuing): Docket No. 19594, commonly known as the St. Louis transfer case. The exhibit that was offered as a conclusion in that case simply states total cost for 6 different services. It does not break down the total cost like I would expect it to show here, in order to show separately purely movement cost. Therefore while the exhibit is on file, showing the total result, it would require some amplification in order to reach what they are talking about here. (Tr. 3189.)

Mr. Hufsmith: Let us dispose of the objection here. We have an objection. (Tr. 3190.)

Examiner Faul: The witness has qualified as a cost expert. He has stated he is familiar personally with the conditions as they exist in Chicago and as they exist in St. Louis.

Mr. Hufsmith: That is by rail now. He has not said he knows anything about what it costs to move a motor truck 15 feet in the city of Chicago.

Mr. Walter: Let me make one other observation. Whenever carriers agree they will not use the information disclosed the individual furnishing it, and that they will use only the combined 7, the carriers thereby limit us without question about that evidence, and the witness has no right to make an agreement with the 7 trucking companies that would be binding on the shippers of Chicago or the state commissions of Illinois and Indiana. We shall make the most of the admission of this testimony in any forum where the validity of any possible order is involved. We are entitled to cross-examine as to the evidence of each 7 and if the evidence is admitted we shall insist on cross-examination as to that particular service. (Tr. 3194.)

Examiner Faul: The witness may proceed. The Commission will be the one to decide.

Mr. Walter: Exception.

[fol. 1401] Mr. Hufsmith: Exception.

The Witness (continuing): In normal times movement of this traffic between St. Louis and East St. Louis aggregates about 1,000,000 tons a year. I refer to the fall of 1929 as a normal time. The service is of 6 different kinds. Three of the services involve the use of off-track inland stations, and that service is in no sense comparable with what we are talking about here. The other three services involve interchange between rail stations; first as between rail stations of 11 East Side railroads and 7 West Side railroads. By far the bulk of interchange service is between rail stations of carriers in East St. Louis and St. Louis, aggregating about 35 per cent of the total, or about 350,000 tons a year. That is the principal service I had in mind that to some degree is comparable with what we are talking about here. (Tr. 3195.) It is comparable with the length of haul.

Examiner Faul: In what way is it comparable, by length of the haul or what other way?

The Witness (continuing): The length of haul, which I calculated in connection with another case, was 2.13 miles on the trans-Mississippi movement. The service is performed by tractors and semi-trailers, with floor space about 8 x 16 feet, averaging loading 6.4 tons, which is a very fair load. Several things contribute to the fact that conditions in St. Louis are more favorable than in Chicago, as the combination of these 6 services reduce average empty movement to about 12½ per cent. This trans-Mississippi interchange traffic involves first the rail stations on the East Side, and of the 11 roads 10 have their stations along the levee where there is a nice wide street and very little traffic. Since the municipal bridge at St. Louis was built with upper deck free to vehicular traffic, the vehicular traffic on the upper deck of the Eads Bridge is very largely [fol. 1402] confined to this transfer movement; very little other traffic. (Tr. 3196.) From the west end of the Eads Bridge to rail stations in north St. Louis the movement stays out of the dense downtown traffic; and the same is true to one of the South Side stations. To two of the sta-

tions located on 7th Street, about 7 blocks from the river (Tr. 3196), there is a movement of 4 blocks which first goes south, avoiding the downtown congestion, and then across the 4 blocks to those stations; so the service as to this trans-Mississippi interchange in several respects is favorable to the St. Louis movement. Unfortunately the distance does not compare with the one-, two- and three-line distances in Chicago.

Mr. Davis: What was the approach to the bridge, describe that.

Mr. Hufsmith: We would like to have the record show our same objection to the appurtenances and approaches to the bridge in St. Louis that we made to the rest of the evidence, and I suppose the same ruling.

Examiner Faul: Yes.

The Witness (continuing): The street in East St. Louis along which 10 of the 11 rail stations are located is practically level; the movement in this interchange from the east end of Eads Bridge across to rail stations in St. Louis is over practically level ground. The only difference is in the east approach to the Eads Bridge, where it is probably a third of a mile to get from the ground level to the upper deck of the Eads Bridge (Tr. 3197), but it is an easy grade, but I do not know the angle. The formula prescribes specifications, first as to assembling of the field data going to the basis of a record for a week of the time consumed, and the conversion of that time from accounts of the transfer companies into a cost. It prescribed a summary for breaking down that cost into 6 parts, one of which is the [fol. 1403] purely movement cost itself; another the loading and unloading; the clerical cost; loss and damage freight claims; bridge toll and ferry. But the result in this trans-Mississippi movement was $1.014 per ton for the movement only, which did not include loading or unloading; but with those factors added it became $1.41. And the 10 per cent return on the property investment, not 10 per cent added to the rate, but 10 per cent of the property investment, the figure became $1.56, and that is the figure that appears in the exhibit, $1.56 cost per ton; and just for the haul alone the cost was $1.014 per ton (Tr. 3198) for an average distance of 2.13 miles, with 12½ per cent empty haul, with average load of 6.4 tons. I began making cost studies in 1906 and for about 10 years

put in 30 per cent of my time in that sort of work, and for the last 16 years 100 per cent of my time. I cannot give an accurate account, but I would estimate that I have made at least 200 engine-hour cost studies. There is district switching, or switching of cars in the Chicago district that will have had, or will have, a road haul. (Tr. 3199.) Comparing like with like, it seems obvious that in the district switching there must be 2 industrial services, whereas fundamentally on the traffic that has received or will receive road haul there could only be one industrial service. If you want to compare like with like you would have to say that the district service is greater than the service involved in the traffic that has or will receive road haul.

Mr. Davis: In your experience in regard to the cost of one against the other of the two you have compared, which is the most costly?

Mr. Walter: I object until we have something more than has so far appeared. If it is based on the cost study in [fol. 1404] this case, and he states it is based on the cost study in this case, then it is only as to the materiality.

Mr. Davis: His general experience of 16 years he has spoken of. I am talking of the two kinds and asking whether he knows whether there is a difference in the two, and what is that difference?

Mr. Walter: I object to that; he is dealing here with 200 terminal stations. (Tr. 3200.)

Examiner Faul: From your investigation made in connection with this case, which of the two services is the more expensive?

The Witness (continuing): If you compare like with like, certainly the district service is the more expensive. If you pick out a district service involving two industrial services, which are the most costly of all elements of service developed, you can have two industries adjacent to each other and that cost would be less than the cost on a car that had received or would receive road haul, that had to be moved a great distance and through one or more classification yards and involved one or more transfers. But my point is that in doing that you would not be comparing like with like. Comparing like with like, I consider industrial switching the more expensive of the two, and for

the reason, as I have stated before, there is bound to be two industrial services, which are the most costly of any of the elements of service prescribed (Tr. 3201), and it takes a longer time per car to switch around an industry than it does in transfer service or interchange service or classification service. More time per car is consumed at the industry, because the movements are necessarily slower. There may be one or all of 6 different kinds of cars to be handled at the industry; their inbound loads and outbound loads; their inbound empties and outbound [fol. 1405] empties; their intraplant movements both for partial loading and unloading.

Cross-examination.

By Mr. Walter:

The investment part of the cost will not differ greatly because of greater value of tracks used in the one service than in the other, that is, line haul against line haul, if you compare like with like. In taking a movement from a junction on the Chicago, Milwaukee & St. Paul on the north side of the district, and a movement a much shorter distance within the district, you would not be comparing like with like. (Tr. 3202.) In comparing like with like, that is, switching service from the connection in the district to the industry, with the same movement of a car going through the same junction point, but to a destination in the district, whether it is one-line, two-line or three-line, you cannot escape the fact that there must be two industrial services on the district traffic and only one on the road-haul traffic, and I cannot leave that fact out of consideration. We have to have the movement to and from the industry. There may be a wide difference in the extent of the service performed by the carriers as between that performed for one consignor as compared with another consignor, such as volume of traffic; and volume of traffic has a great deal to do with it; and the complexity of the tracks involves time and terminals. (Tr. 3203-3204.) I stated the fundamental underlying principle clearly. Beyond that you can go into any refinement you care to as to taking an individual movement between one consignor and one consignee in the district and a representative movement on the line-haul traffic.

There were 7 companies in the trucking study at St. Louis and some of the trucking companies had business other [fol. 1406] than that of handling to and from the rail stations, and that business was included in the cost study to the extent that it was involved; and it was involved because a record was taken of all the time of all the vehicles of all the companies studied. We included all the costs for all of the time as to each of the 7 lines in connections with the specifications of the formula. (Tr. 3204.) We found the detailed information as to the movement per ton cost for each of the 7, but I cannot give the variation for each of the 7 because I haven't that detail. There was not a very wide variation. As a matter of fact, the costs of the different companies for the same services were not materially different. (Tr. 3205.)

Mr. Walter: I am not talking about the same service. I am asking you for the cost per ton per movement for each of the 7 trucking companies and I will ask for the names of the 7 trucking companies first per ton movement and second the total cost of handling including loading and everything and freight including 10 per cent return and want this information for each of the 7 and the disclosure of the names of the 7. We are entitled to meet this testimony and the *the* actions of the State Commissions cannot be stricken down on evidence that is undisclosed for purposes of rebuttal and purposes of cross examination and for calling other witnesses. (Tr. 3205.) I realize Mr. Saur's commitment, but that does not affect or bind us and we insist on the disclosure so we may meet the testimony.

Mr. Davis: Have you the names of the trucking companies that were involved?

The Witness (continuing): Yes, sir.

Mr. Davis: Does the Examiner desire that the witness read those names of the trucking companies into the record. [fol. 1407] Mr. Hufsmith: I see no benefit that would flow from it.

Mr. Walter: Unless he gives the details for each concern. I want the cost figures for each of the 7, the flow of movement, investment, etc.

The Witness (continuing): I would consider that a violation of my pledge.

Mr. Walter: Then I move to strike all of the evidence of your witness relating to the cost study of trucking at St. Louis.

Mr. Hufsmith: In which the Indiana Commission joins.

Mr. Shaffer: We join in the motion.

Examiner Faul: The motion is overruled.

Mr. Hufsmith: Exception. (Tr. 3206.)

The Witness (continuing): The Columbia was one of the companies involved and the Examiner who heard the case was Mr. Harry Ames.

Cross-examination.

By Mr. Walter (continuing):

Mr. Walter: Let me ask, is that the case Mr. Saur, where after the evidence was all in, a reliable trucking company offered to do all of the business of the 7, for $150,000 per annum less than the carriers had been paying, or substantially that?

The Witness (continuing): Well that has to do with negotiations leading up to the final settlement of the matter and I could not pretend to be familiar with that.

Mr. Walter: But isn't that your understanding that that is the case and that offer was made in good faith?

The Witness (continuing): I know there was an offer made for some reduced figure. But whether it was approximately $150,000 I do not know.

[fol. 1408] The service involved the movement of all cars of less than car load freight, generally speaking, merchandise; loading an average of 6.4 tons but the capacities of the trucks I do not know. (Tr. 3207.) I do not know the capacity of these semi-trailers. I do not know whether the total capacity would be some 3 times the average loading of 6.4 tons. I haven't the data with me that would show the capacity. I do not know how that loading would compare with the loading in the Chicago District. There is such a wide variety of commodities, merchandise movements here in Chicago.

Examiner Faul: Mr. Walter, won't it be all right if Mr. Saur can state what the findings of the Commission was in that case?

Mr. Walter: If it is in the decision of the Commission, it is there for the purpose of our brief. We can refer to the decision of course, but I have said so many times that here they are offering a character of testimony which it cannot be perceived what the cost is in the district. It bears no relation to competition between trucks and rail carriers, and the only true answer is what is the situation here. I am making my objection to the pertinency of the testimony. (Tr. 3208-3209.)

The Witness (continuing): In the movement between rail stations of 11 East side and 7 West side stations, I did not say there was some of that that was in, I said of the 6 services, I did not feel that 5 of them were as nearly comparable as this one trans-Mississippi movement. There was one service besides the 6 I mentioned, commonly referred to as direct delivery service where by reason of the rails of East side roads ending on the East Side, there has ever since 1906 been an arrangement whereby if a consignee elects to use that service, paying for what would amount to the movement to the West end of the bridge and [fol. 1409] without stopping the vehicle or making any physical change whatever, that drayline becomes the drayage company of the consignee and to that extent is paid beyond the West end of the bridge. That is not one of the 6 I referred to. (Tr. 3209.)

There was no service there that we studied where the movement was consigned from consignor to consignee by truck where it did not move to or from a rail terminal. It all involved rail haul, and in this case it is my understanding that the truck movement does not involve handling of rail traffic, but is from consignor to consignee and never touches the rail premises.

Mr. Walter: I move on that ground total dissimilarity of movement to strike this testimony from the record.

Examiner Faul: Does that make a difference in the cost of the truckers in handling the traffic.

Mr. Walter: Certainly. But we will go ahead with the cross examination. (Tr. 3210.)

The Witness (continuing): I do not believe the 3 services involving use of off track inland stations are at all

comparable. I gave you the 3 figures on trans-Mississippi interchange and I understand you want the same 3 figures for the other 5 services and to define each service as I go along. (Tr. 3211.) Following the 3 off track inland station services, I gave the number 1, and number 2 service would be the interchange between West side stations. (Tr. 3211-3212.) The interchange between West side stations, the movement cost was $1.144, the total cost without any profit was $1.40, with a 10 per cent return on investment, the figure was $1.55 per ton in all cases. The interchange movement cost between East side rail stations was 104.6 cents and total cost was $1.304 and with 10 per cent return on investment was $1.44. City outbound traffic to West side rail stations which involves the use first of the off track [fol. 1410] inland station movement the cost was 87.8 cents, Total 161.8 cents and with 10 per cent return on investment became $2.02. City outbound traffic to East side stations, the movement cost was 80¢, total cost 167.6 cents which with 10 per cent return on investment became $2.08. The city inbound from East side rail stations, the movement cost was 65 cents; total cost 228.2 cents; with 10 per cent investment added, became $2.79. That includes the 6 services studied. There is no absorption on city inbound traffic from West side stations. (Tr. 3212.) We did not compute the cost of that service because it was not involved. Under my obligation to the companies, I cannot give the same figures for each of the companies. It would not be fair to say there was a wide variety in difference for the individual companies, as in the consolidated returns. If you read the formula, you will see why. The formula is not in evidence. Not to my knowledge do these railroads own stock in all the trucking companies. (Tr. 3213.) That there was no intercorporate relationship or holding of stock by any of the railroads in any of the trucking companies was pretty thoroughly brought out in the first hearing, that there was no relationship. There was no study made to check up on these costs with the trucking costs between industries by other trucking companies at St. Louis. I do not know that it was shown that there was trucking as far as Wood River, Illinois, into St. Louis, at a less rate than the published switching rate. I did not make a study of the competitive situation at that point as betwen rail haul and truck haul in the district and have not done that elsewhere. I do not

know that railroads all over the country outside of the Chicago District are reducing rates to meet truck competition. (Tr. 3214.) The Pennsylvania has not consulted me as to how far it could shrink its rates to meet truck competition and not go below out of pocket cost. (Tr. 3214.)

[fol. 1411] Cross-examination.

By Mr. Hufsmith:

I have not used this formula for making similar cost studies as to motor vehicle transportation. This was the only trucking study I participated in; and I have made no study of such transportation facilities within the Chicago District, and am not in a position to state what those costs might be. Nor has any such data been compiled. (Tr. 3215.) We did not make a study in the Chicago Switching District to ascertain whether or not average cost of the service in industry switching was greater or less than the average cost of interchange at the classification yard with the line haul carrier, but I know that from my studies and all studies I have made. I was Chairman of the Chicago District Cost Study Committee and was in contact with all the results of its activities. (Tr. 3216.) I think there was an exhibit in the original case that showed those different average costs per element of service in interchanging with the line haul carrier, and in switching at an industry but I do not know what the difference was and to conduct such an examination in the Chicago Switching District, it would have to be compiled. (Tr. 3217.) We had to figure out what the average cost was for the delivering or picking up of a car at the industries. We figured all the interchange costs and all the classification costs and all of the transfer costs and all of the industrial costs were calculated. We computed average costs of all interchange service by the carriers who picked the car up at the industry and delivered it to the line haul carrier; the average cost of all interchange service at that point and did that for each individual line. If I understand your question that is to say from the industry to the point of interchange would be identical and the average cost would be the same whether the car was to go beyond that interchange point to another industry or in line haul. (Tr. 3218.)

[fol. 1412] The average cost of the movement from that point to the line haul carrier as against the delivery from

that point to the industry, insofar as the two kinds of cars had to be transferred and classified, the average cost would be the same. We can figure out the average cost of picking up the car at an industry or delivering it to the industry in the district. (Tr. 3219.) Or can figure the average cost of delivering the car to the line haul carrier. But I do not understand that is what you are trying to get at. The average cost of delivering a car destined out in line haul service in the district is different for every railroad and I cannot give you the average for that service and I cannot give you the average cost of service of delivering the car to the industry. I cannot conceive instances where the service in the classification yard at point of delivery to the line haul carrier might exceed cost of delivering the car or the service of delivering it at the industry. (Tr. 3220.) We have in the industrial movement 2 industrial services and in the line haul, we have but one industrial service and a comparable movement would be to have the 2 originate at the same industry and in that event one industrial service would be the same and if they moved through the same classification yard, one going to the industry and the other out in line haul service, they would still be comparable (Tr. 3221), as long as they stayed together and received the classification, one going out on road haul and the other brought to the industry. Assuming 2 cars originated at the same industry whether it be 1 line, 2 line or 3 line, and they stay together (Tr. 3222) until they get to the classification yard of the road haul carrier, all there is left to do with the road haul car to put it in a road haul train is to classify it. That is all that is left as to the switching service. To the extent that the 2nd car [fol. 1413] which is destined to a subsequent industry receives more service than that which the line haul car received, to get it into the line haul train, the added cost of the 2nd industrial service would certainly be an advance. That does not assume the first classification yard that the car comes into, is the point of interchange with the line haul carrier. I made an effort to follow you and I do not understand. (Tr. 3223.) In my answer, I had both cars moved into the classification yards, but I did not assume in my answer that from that point one would be taken to the industry by the switch crew and the other picked up by the line haul carrier.

Examiner Faul: Mr. Saur can you describe 2 actual movements so we will get away from this argument back and forth. (Tr. 3224.)

Witness (continuing): I tried to. Take a movement of 2 cars from the some industry by the same switching crew, assuming 1 coupled immediately back of the other and both just back of the locomotive and they are the only 2 cars the switching crew is handling and they take them to the classification yards, up to that point we can fairly assume that the cost of the movement of the 2 cars has been the same. (Tr. 3225.) If one of these cars is destined to an industry within the district, that would be served out of that classification yard, the car would be left there and subsequently delivered to the 2nd industry. (Tr. 3225.) As far as the first crew is concerned, it would leave that car in the classification yard. As to the road haul car, if the classification yard is the one that will classify the car into the road haul train, that is all the service that would be given that car, but the other car would receive the 2nd industrial service. In making this answer, I assume that the first classification yard reached by these two cars is the [fol. 1414] yard from which the 1 car is to move out in line haul service but that assumption does not make any difference (Tr. 3226) because that is the way I understood you. But assuming that these 2 cars were handled by the Pennsylvania Railroad and moved to the classification yard, and if the Pennsylvania would move the line haul car to the point of interchange with some other road haul carrier and deliver the other car from that yard with the switch engine to the industry to which destined, the industrial movement as I repeatedly said, would be the more costly on the average. I did not say that the movement from the first classification yard in each instance to the industry would be more costly to the carrier than taking the other car from the classification yard and delivering to the point of interchange with the line haul carrier. At least I did not intend to say that. (Tr. 3227.) But I mean to say that the average cost of delivering the car from the classification yard number 1 into which we have taken the 2 cars, to the industry is on the average more costly than taking the car from the classification yard number 1 to the point of interchange in the district. This study is all embodied in the others; the combination of elements are in-

cluded in an exhibit in the previous hearing, but I could not tell you the average difference. (Tr. 3227-3228.)

Cross-examination.

By Mr. Tholin:

In the exhibits introduced in this case, we have shown the cost of handling a car coming in or going out in road haul traffic for comparison only to the extent that we are talking now as to comparable services and the classification of the car in the classification yard that classified the car in the road haul train, would also classify that car for further movement in industrial service. I mean that in showing certain unit cost for instance in the classification or transfer, or interchange, or industrial switching, which unit cost [fol. 1415] we have applied to one car, as well as to another, if the two happen to move in the same place, all you could figure is the average. (Tr. 3228-3229.) We have included both kinds of traffic in working out this unit cost. I think the number, the particular transfer moves interchange moves and industrial switch moves charged to this intradistrict traffic are all embodied in that great big exhibit; (Tr. 3229) but we have not shown anywhere in the record what the combination of costs are that pertain to road haul traffic because that traffic is not involved in the cost study.

Mr. Tholin: Have you made any other study on which you base the statement that one is more expensive than the other, combining elements of cost so as to arrive at total cost for road haul car compared with intradistrict car? Have you made such a study?

The Witness (continuing): I do not need to make a study.

Mr. Tholin: You know without making a study? On what basis do you know this? (Tr. 3229.)

The Witness (continuing): I know from 16 years and 200 cost studies that industrial service is more costly than any of the elements of service in the yard. We do not follow the road haul car because it was not involved. These gentlemen are trying to bring in a comparisan between a car that had received or would receive road haul movement, with a district car and I thought I stated the fundamental theory as I understood it. I think early in my

testimony I said you could pick out hundreds of cases in this district where the combination of elements would make it more costly for the road haul car than the industrial car but you would not be comparing like with like if you did [fol. 1416] so. (Tr. 3230-3231.)

Examiner Faul: I think the record is clear as to the difference.

Recross-examination.

By Mr. Hufsmith:

If you accounted for the difference between the average industrial move as against the average interchange move, I do not think you would have comparability of the two. (Tr. 3231.) I do not understand what you mean by accounted for. We worked the cost of these different elements to determine what the average cost in the district for the carriers involved was from industry to industry on 26,000 cars and our objective was to determine that cost on district traffic; and we did that by giving to each car the exact units of service that applied to it, which included 2 industrial moves if two industries were involved and have shown cost of moving from an industry to an industry and added both in. (Tr. 3232-3233.)

I did not say the movements from industry to industry and from industry out in line haul service were always comparable. I said you could pick out anyone you wanted to. (Tr. 3233.)

Cross-examination.

By Mr. Cardy:

In the trucking study described at St. Louis and East St. Louis, there was no stone or coal transferred. It was all merchandise. I do not know whether or not there is a large volume of stone trucked into St. Louis. We did not make a study of that at all. I have no knowledge about trucking stone. (Tr. 3233.)

Recross-examination.

By Mr. Tholin:

I understand there are some industries that own their own industry tracks in the Chicago Switching District.

[fol. 1417] Mr. Tholin: If there are some industries that own their own tracks in the Chicago Switching District, as I believe the record clearly shows, didn't you make any study of the cost that should be applied in connection with switching on those tracks compared with switching on the tracks owned by the carriers?

Mr. Davis: I object to that. That is not involved in this case.

Examiner Faul: The witness may answer.

The Witness (continuing): As I see it, I never could see the difference between taking total cost of maintaining company owned tracks and spread over the engine hours including the time the engine was on the tracks owned by the industry or undertaking to refine that which would only have the effect of increasing the engine hour costs when it was not on those tracks. As to making a study of the effect of the ownership of tracks in making comparison between cost of industrial switching with cost of interchange that is all embodied in Exhibit 83, the whole discussion is the position of the shippers and the position of the carriers on that point. (Tr. 3234-3235.) In stating that cost of industrial switching is more expensive than interchange switching, the only consideration given to the fact that in some of the industries do not own the tracks was to the extent that that matter was discussed in the joint conference. (Tr. 3235.)

Mr. Tholin: And the same would apply in connection with not only ownership of the tracks as involved in the operating ratio but in connection with the maintenance of those tracks as involved in the operating expense of the railroad: you have given no consideration to either factor. (Tr. 3235.)

The Witness (continuing): Except to the extent that they were considered in the joint conference and are embodied in Exhibit 83. (Tr. 3236.) I do not know whether the op- [fol. 1418] erating expense relating to trucking costs in St. Louis are more or less at the present time than in 1929.

Cross-examination.

By Mr. J. S. Brown:

Mr. Brown: Mr. Saur did you learn in conducting that cost study in 1927 that grain cars to or from elevators are

spotted by elevator power and not by the locomotive power of the carriers?

Mr. Davis: I object to that. It is not cross-examination.

Mr. Brown: I am asking if he learned that.

Mr. Davis: Well, I object to it. It is not cross-examination.

Mr. Brown: If it is the proper kind of study, he would have found it out.

Mr. Davis: Let it stand that way.

Mr. Brown: I did not hear you.

Mr. Davis: I said, let it stand that way.

Mr. Brown: If he does not want to answer, all right. I wanted it stated as a fact.

There is no spotting at the elevators of grain by the railroads. You can put on a man to deny that if you want to. (Tr. 3236.)

Recross-examination.

By Mr. Walter:

Road haul service was not involved in the study and was given no consideration except to the extent that road haul cars were moved at the same time as district cars and are included in the average cost, but there was no showing as to road haul car costs nor as to the relative number of average transfers and various kinds of services performed on the road haul. (Tr. 3237.) But I do not remember any [fol. 1419] exhibit showing computation of the average number of transfers or classifications on the intradistrict traffic divided up as between 1 line, 2 line and 3 line. (Tr. 3238.)

G. F. Vivian, recalled as a witness, testified as follows:

Direct examination.

By Mr. Davis:

In addition to the two copies of trucking contracts made by the Northwestern Railway and the copies of contracts between the Chicago, Milwaukee & St. Paul and the Langdon people which we have furnished to Mr. Walter, I have

2 more, one with the Chicago Terminals Co., which is a trucking company and one with Nielson Brothers, a trucking concern. (Tr. 3239.) Nielson Brothers do the trucking and the pay is through the Chicago Terminal Company and these were for deliveries at Healy. The different rates for different distances in the contract are: for 1 mile 5¢; 10,000 pounds or less, minimum 6,000 pounds: 2½ miles 5½¢; 4 miles 6¢; 5½ miles 7¢; 7 miles 8¢; 10 miles 11¢; 15 miles 13¢. For loads of 20,000 pounds and over, 1 mile 4¢; 2 miles 5¢; 4 miles 5½¢; 5½ miles 6¢; 7 miles 7¢; 10 miles 8¢; 15 miles 10¢; all these rates being in cents per hundred pounds. (Tr. 3240.)

Another contract is that with the Arthur Dixon Co., for trucking between Cortland Street Station and Union Street, both on the Chicago, Milwaukee & St. Paul. (Tr. 3241.) I gave the distance from Western Avenue to Union Street Station as 1.75 miles, which should be 3.25 miles.

The rates in the contract now referred to are for 10,000 pounds or less, minimum 6,000 pounds, 1 mile 5¢; 2½ miles 5½¢; 4 miles 6¢; 5½ miles 7¢; 7 miles 8¢; 10 miles 11¢; 15 miles 13¢. For 20,000 pounds and over for 1 mile 4¢; 2½ [fol. 1420] miles 5¢; 4 miles 5½¢; 5½ miles, 6¢; 7 miles 7¢; 10 miles 8¢; 15 miles 10¢.

This morning I stated the mileage from Cortland Street to Union Street is 2½ miles. This mileage is in dispute. The trucking company bills the carrier on the 4-mile zone, while the carrier contends that the mileage is slightly under 2½ miles, which should put it in the 2½-mile zone. There is a difference of ½ cent per hundred pounds in the rate. The rate for 2½ miles is 5 cents; 4 miles is 6 cents. (Tr. 3241.)

Cross-examination.

By Mr. Walter:

All these contracts cover what is commonly called trap car freight, package car less than carload freight from station to station in varying loads, as I have stated; and for the compensation stated I presume the company not only handles the freight from warehouse to warehouse, but also assumes all liability for damage to persons or property connected with the traffic, for which any liability is incurred prior to the time they have yielded up the goods in

good condition. I have not read that contract, but I think that is so. From my general knowledge of the trucking rates that have come before me in Chicago, I think these various rates I have stated fairly state the cost of trucking service which is competing with the rail carriers in the handling of intradistrict carload freight. (Tr. 3242-3243.) I think the carriers are competing with trucks for the handling of intradistrict carload freight as they are all over the United States, and I think we are meeting truck prices in the Chicago district, but I do not know any more about it than what has been embraced in the testimony I have heretofore given. (Tr. 3243.)

Mr. Davis: Mr. Examiner, before we close the case—that [fol. 1421] is all the evidence I have, but I understand and I think I should make this statement of record for Mr. Brown of the Board of Trade, who does not seem to be here; anyhow, I will make the statement and he can be advised of it later. (Tr. 3243-3244.) Mr. Vivian gave the movement of the 62 cars he asked for between the two elevators, and I am advised by the Rock Island during the lunch period that they contend or consider that that movement is an intraplant movement, so I thought I should make that statement on the record. Mr. Vivian has given the movement and the facts. (Tr. 3244.)

Mr. Walter was furnished a list of industries that were marked by keys in Exhibit No. 110. I do not know whether the examiners were furnished with a copy of that or not, but by ruling of the examiners we were to give Mr. Walter that. We consider that without an order from the Commission to furnish it, it would be a violation of Section 15. Mr. Walter now asks if he can have that marked as an exhibit in the case. If there is no objection on the part of the examiners it can be so marked. (Tr. 3244.)

Examiner Faul: All right; it will be received as Exhibit 110-A.

(Said document was thereupon received in evidence, being marked "Exhibit No. A-110, Witness Vivian.") (Tr. 3246.)

Mr. Davis: Now that closes our rebuttal, and I suppose we should fix the time for briefs.

Examiner Faul: This will be a proposed report case. Briefs will be due from all parties July 8, 1932, and the

hearing in Docket No. 19610 is closed at 2:10 P. M., May 10, 1932. (Tr. 3246-3247.)

[fol. 1422] At a hearing in the above entitled consolidated proceeding, but on the record of which was made in Acme Steel Company, et al., Complainants, v. Atchison, Topeka & Santa Fe Railroad Company, et al., Docket No. 24950, before Examiners H. C. Faul and W. B. Wilbur of the Interstate Commerce Commission, at Chicago, Illinois, on May 10, 1932, the witnesses hereinafter named were called and presented in behalf of complainants and other parties to the proceeding, in the order in which their names appear, and under oath testified in substance as herein set out. (Tr. 1-7.)

The Chicago Stone Producers Association, the Chicago Association of Commerce, the Public Service Commission of Indiana, Illinois Commerce Commission, and the Chicago Gravel Company intervened in said proceeding (Tr. 7-8), but with the understanding that their petitions of intervention should not broaden the issues. (Tr. 9.)

F. S. Holland called as a witness in behalf of complainants.

Direct examination.

By Mr. Walter:

I am assistant traffic manager of the Standard Oil Company of Indiana.

Q. State your experience in railroad matters and transportation matters.

Mr. Davis: Unless you want to, we waive his qualifications.

[fol. 1423] Mr. Walter: All right.

The Witness (continuing): I am familiar with the issues involved in this case and have prepared a statement embodying the facts to submit to the Commission. Our refinery at Whiting, Indiana, supplies our own warehouses, bulk plants and customers in the Chicago district (Tr. 13), the warehouses and bulk plants so supplied being shown in

my Ex. No. 1. (Said exhibit offered and received in evidence and marked "Comp. Ex. X-1, Witness Holland.") The figures enclosed by circles represent the index numbers referred to at the left of the map, and under the heading "Stations" are names of bulk plants and warehouses indicated by the circles. (Tr. 13.) At the hearing of the original case in 1928 the testimony of a representative of a refinery located in the Calumet district, where Whiting, Indiana, is located, would cover other refining plants generally, including the Standard Oil Company of Indiana, Shell Petroleum Corporation, and Sinclair Refining Company, and now the Empire Oil & Refining Company, which has been located in the district since the original hearing. On investigation we find we shipped from Whiting, Indiana, to the Chicago district in September, 1926, 1,787 cars; in September, 1931, 1,681 cars, and in March, 1932, 1,447 cars. The volume of traffic today is considerably less than in September, 1926, used as the basis for the cost study, the lower volume being partly due to a substantial movement by truck. (Tr. 14.) We also find that during the test period week from August 4 to 10, 1927, we received and forwarded, via Baltimore & Ohio Chicago Terminal, 264 cars; via the Belt Railroad, 13 cars; via Chicago, Milwaukee, St. Paul & Pacific, 87 cars; and via Indiana Harbor Belt 91 cars. Our weekly average for the year 1927 via the Baltimore & Ohio was 264 cars; via the Belt Railway of Chicago 19 cars; via Chicago, Milwaukee, St. Paul & Pacific 73 cars, and via Indiana Harbor Belt 71 cars. [fol. 1424] (Tr. 14-15.) The weekly average the first three months of 1932 via Baltimore & Ohio Chicago Terminal was 165 cars; via Belt Railroad 12 cars; via Chicago, Milwaukee, St. Paul & Pacific 72 cars; and via Indiana Harbor Belt 132 cars. (Tr. 15.) The 132 cars via Indiana Harbor Belt was an increase due to heavy movement from our refinery to a large plant in the Calumet district, something over 500 cars, during that period, being an intrastate one-line haul movement for a comparative short distance. (Tr. 15.) During the test period on the Chicago, Burlington & Quincy from June 15 to 21, 1927, we received and shipped via that railroad 2 cars; via Chicago & North Western 11 cars; our weekly average for 1927 via the Burlington was a little more than 2 cars; via the Chicago & North Western 12 cars. The weekly average for the first three months of

1932 via the Chicago, Burlington & Quincy was 4 cars, and via Chicago & Northwestern 11 cars. For the test period August 8 to 14, 1927, via the Pennsylvania, 25 cars, with weekly average for the year 37 cars. (Tr. 15.) Weekly average for the first three months of 1932 via the Pennsylvania was 36 cars. (Tr. 15.) For the test period August 19 to 25, 1927, via the Chicago, Rock Island & Pacific we handled 3 cars; via Chicago Short Line no cars; via Chicago, West Pullman & Southern 13 cars; via Chicago & Illinois Western no cars; via Illinois Central 5 cars; via Illinois Northern 6 cars; via Pullman Railroad 3 cars; as against a weekly average for the year 1927, via Chicago, Rock Island & Pacific for 17 cars; via Chicago Short Line of 2 cars; via Chicago, West Pullman & Southern of 15 cars; via Chicago & Illinois Western of 1 car; via Illinois Central of 4 cars; via Illinois Northern of 5 cars; and via Pullman Railroad of 4 cars. The weekly average for the first three months of 1932 via Chicago, Rock Island & Pacific [fol. 1425] was 2 cars; via Short Line less than 1; via Chicago, West Pullman & Southern no cars; via Chicago & Illinois Western 12 cars; via Illinois Central 8 cars; via Illinois Northern less than 1; and via Pullman Railroad 2 cars. The average weekly intrastate shipments for the year 1927 was 29 cars as against average per week for the first three months of 1932 of 67 cars. The average interstate movement for 1927 was 370 cars as against average per week the first three months of 1932 of 290 cars, being based on 1927 shipments divided between one- and two-line hauls. Intrastate one-line movement was 98.8 per cent; two-line 1.2 per cent; interstate movement one-line was 42 per cent; two-line 57 per cent; (Tr. 16) three-line 1 per cent. Slightly more than 7 per cent of shipments from Whiting to Chicago district moved in railroad equipment, 93 per cent moving in privately owned tank cars.

The Commission in its decision 177 I. C. —, 669, Item 2, observed that use of private equipment should be compensated for by rental charges instead of reductions in switching rates, and on page 713 said that in instances where necessary to utilize private equipment, shippers should be compensated for the use thereof by specific rental charges, and not through differentials in freight rates. (Tr. 17.) Although repeated requests to the carriers as to what action they would take with respect to the Commission's

decision have been made, we have received no answer and we believe that on all business which we have moved in tank cars interstate to the Chicago district we have been paying an improper rate and should be entitled to reparation. On all 1931 shipments to the Chicago district our average cost for use of tank cars was $5.10 per car. (Tr. 17.) We own and maintain approximately 45 miles of track at our Whiting refinery, and for the years 1926, 1927, 1930 and 1931 our yearly average maintenance expendi- [fol. 1426] ture was $82,659.09, or $1,921.00 per mile per year. (Tr. 18.) The map, Ex. 1, also shows the railroads serving the plant, the number of lines used from Whiting to destinations, the number of tank cars of white products, which include gasoline, kerosene or furnace oil, moving during the year 1931 from Whiting to destinations shown. (Tr. 18.) It was stated at the original hearing that if rates originally published by the carriers became effective it would force our company to move considerable business by trucks. (Tr. 18.) Stations 1 to 8, Englewood, Grand Crossing, 17th and Mechanic Street, South Chicago, Washington Heights, 47th and Western, West Pullman, and Hammond, the number of cars shown——

Mr. Davis: I object to any evidence in regard to handling shipments by truck, and cite as authority for that several cases so that I can have my record complete. In Southern Classification Rate Investigation 100, I. C. C. 513, the Commission said in substance that in fixing the maximum reasonable rates, competition is not a factor which it could take into consideration; that though carriers might within limits make low rates to meet competition, the Commission was without power to compel the carriers to do so.

Examiner Faul: The objection will be noted.

Mr. Davis: I shall object to having any part of it in regard to trucking in this case taken into the other case under the guise of the stipulation that I entered into.

Mr. Walter: May it be understood that the objection will run to all similar testimony on succeeding witnesses, so we won't have to interrupt all the time?

Mr. Davis: That would suit me very nicely. (Tr. 19-20.)

The Witness (continuing): —to the station index 1 to 8 inclusive the number of cars shown at these stations, 3,907, [fol. 1427] are being or will be hauled by trucks during

1932, that is, if the rates continue in effect as they are today, as such handling is at considerably less cost than under carriers' published rates. At our Englewood station on the New York Central, under truck movement we save $10.16 per car, part of which includes cost of our tank cars used in this business. The total saving to the 8 stations amounts to $36,776.46 per year, or an average of $9.41 per car. From the next 5 stations, index 9 to 13 inclusive, a trucking company has contracted to handle the business at a figure less than the railroads' charges, but to these stations we have not yet moved any large volume. (Tr. 20.)

If a compromise with carriers had been effected truck movement would be avoided, but because to handle by trucks would require those companies to expend additional money, we feel it necessary to make a contract for at least one year. On the basis of 5,229 cars to stations index 1 to 12 inclusive, we could handle approximately one-half the total movement by truck on the present contract. (Tr. 21.) At our plant index 14, located in northern part of map, known as Cortlandt Street, on Chicago, Milwaukee, St. Paul & Pacific Railroad, on the north branch of Chicago River and accessible to water transportation, during the 1920 railroad strike we handled our business by placing one of our boats loaded with gasoline at this plant, which we distributed throughout the city by truck. (Tr. 21.) Steamship lines solicit business from our Whiting refinery for delivery on the lake or Chicago River in boats smaller than we operate on the Great Lakes. (Tr. 21.) In my judgment we can handle petroleum products by water much less than at present rail rates. (Tr. 22.) While trucking companies solicit package business out of our Whiting plant, and at present are getting but a small part of it because of our limited platform facilities at [fol. 1428] Whiting, we are making a survey of this phase of the trucking situation though not particularly with reference to Chicago switching, but as a general one covering all destinations. At present we handle some package goods by truck from Whiting to Indianapolis, Terre Haute, Detroit, etc., saving considerable as against the rail rate. (Tr. 22.) As I understand, all witnesses from the operating departments of the carriers have said that distance would not be given material weight in fixing switching

rates in the Chicago district. With this in mind, index 8 on the map represents our Hammond, Indiana, plant, but a short distance south of Whiting refinery. Indiana Harbor Belt serves the Hammond plant and also the Whiting refinery. The intrastate rate is 2½ cents per hundred, modified by emergency charge in Docket 103, of 10 per cent, making 2¾ cents. Index 1, our Englewood plant in Illinois, is but slightly more distant from Whiting than Hammond, but the interstate rate fixed by the Commission for this single-line haul is 3 cents per hundred. Englewood and our Whiting refinery are served by the New York Central. We own and maintain the tracks at Whiting, Hammond and Englewood. (Tr. 23.) In this case the Commission apparently holds the rate between the industries on the Chicago Junction to be reasonable. I do not know what the record shows as to track ownership at those industries, but keeping in mind the facts I have stated and the fact that the Chicago Junction Railroad, the Indiana Harbor Railroad, and the New York Central are under the control of one system, then to my mind our rates are unreasonably high. (Tr. 23-24.)

Mr. Walter: That is handling by truck?

A. Didn't I say by truck?

Q. Yes.

A. I should have put in there, "by truck," and consid- [fol. 1429] erable saving under the railroad. We handle all of our gasoline, kerosene and furnace oil by truck from Wood River to the St. Louis stations, about thirty-odd miles, and over a toll bridge at that. (Tr. 24.)

Cross examination by Mr. Davis, representing respondents:

The 132 cars moving via Indiana Harbor Belt shown at the top of page 2 moved via single-line 3 or 4 miles. (Tr. 25.) We have had this movement off and on. Shipments originated at Whiting and the movement is intrastate in Indiana. The difference between the state rate and interstate rate had nothing to do with this movement, but we may have to make it by pipe line and possibly will if intrastate rates go up, as we have a line from our refinery today to some of the plants in that district. (Tr. 25.) We have

pipe lines from the mid-continent fields. Pipe lines reach our plants at Whiting and at Wood River, but we do not own them all. I haven't the different figures, but we have handled interplant and in-and-out-of plant movement loaded and empty at Whiting over our tracks as high as 700 cars per day. The years vary. Right now we are not running anything like that. (Tr. 26.) We receive an allowance of $1.75 per car for this handling in-and-out-of the plant, but not interplant. This is being reduced to $1.70, based on recent wage reductions, etc. (Tr. 27.) This allowance would not apply to all of the 700 cars handled in a day. We get $1.75 allowance for cars that carriers deliver at our gate which we spot. This is absolute cost, but does not include track expense or overhead. It is the bare cost of the switching if furnished by the railroad. (Tr. 28.) The Shell and Sinclair companies are located at Whiting on the Indiana side. The Empire Oil & Refining Company is at Hammond. One or two small concerns are located on the [fol. 1430] Illinois side. There are gas pipe lines to the Illinois side. (Tr. 28.) Prior to December 10, 1931, our rates to the district were 2½ cents per single-line, 2½ cents for two-line and 3 cents for three-line hauls, minimum weight 60,000 pounds. My figures are based on 10,000-gallon cars, which would mean 66,000 pounds per car. We contend that rates established December 10, 1931, at the minimum weights, of 3 cents, 3½ cents and 4 cents per 100, are unreasonable. We propose a 2½-cent rate for single-line as a reasonable rate, and for a two-line haul possibly 3 cents might be reasonable, and a three- or more line haul should be a little higher, and we propose 3½ cents. (Tr. 29.) There is no objection to the 60,000-pound minimum as applied to tank cars, but 60,000 pounds can be loaded only in a 50-foot box car. If you tier the barrels it would break every car. Oil minimum weight in box cars is 30,000 pounds. Since the increase in rates December 10, 1931, we have demanded larger box car equipment and have generally paid a premium on that. We favor the old commodity basis of rates, but if it is too high with railroad handling we could not say we would favor the commodity basis. We pay more on the business than is averaged for the sale. We are standing part of the slack like heavy-loading commodities pay, while the light-loading ones get the benefit. (Tr. 30.) The three photographs here show handling of gasoline by truck and trailer, with a load running from 5300 to 5800

gallons, about the size of a small tank car. Gasoline weighs 6.6 pounds per gallon. (Tr. 31.) I can't give the speed of the trucks. We have the volume and trucks are operating every day, and we have no trouble in making deliveries. From our standpoint it is less trouble than handling by railroad.

Q. Nevertheless you are reluctant to make an investment for truck facilities required to handle your output, but if [fol. 1431] the increase in rates interstate continues and should be applied on intrastate traffic, you certainly would do it?

Mr. Davis: Objected to as leading, and also as calling for a conclusion.

The Witness (continuing): The carriers understand our position clearly. Rail rates to meet our truck movement from Whiting to Elgin, Aurora, Joliet, Rockford and Freeport have been made, and under those rates that business returned to the railroads. We have given railroads the business wherever they have met truck competition. This applies to Green Bay, and on the first of the month we restored the business at Muskegon. The railroads have not seen their way to meet the truck competition in the Detroit territory. (Tr. 32.) All our interstate rates to the Chicago district were increased December 10, 1931, except to Rogers Park, Jefferson Park and Des Plaines. These stations were reduced because if not we would have moved the business by truck. Those points are in the so-alled outer zone. (Tr. 33.) The rate from Whiting to Aurora and Elgin was around 11 cents, reduced to about 7 cents. The trucking rate would still be less. The reduced rates to Rogers Park, Jefferson Park and Des Plaines came about through the interstate basis of 3 cents, 3½ cents and 4 cents, in our case 3½ cents. (Tr. 34.) We have had reduction in truck rates from Whiting to Hammond and Goshen, Elkhart, and South Bend. Outside the switching district we have rates all very much less than the rail rates, but have not been using them to any extent. (Tr. 34.) In referring to present rates I have referred to the interstate basis of switching rates. If we are to have one commodity rate for the district, then both the state and interstate rate should be the same. If we are not to have one commodity rate, then you must take a zone or some other method. I am not talking about any other commodity. (Tr. 35.)

[fol. 1432] W. J. Hammond, called by complainants, duly sworn and testified as follows:

Direct examination by Mr. Walter for complainants:

I am traffic manager of the Inland Steel Company and have been for 14 years.

Mr. Davis: We will waive his qualifications.

The Witness (continuing): The Inland Steel Company produces iron and steel principally, with some by-products of coke ovens. The iron is distributed in the form of pig iron and steel in all kinds of finished products except wire nails, tin plate and pipe. (Tr. 36.) The Inland Steel Company is a Delaware corporation with principal office at Chicago, with plants located at Chicago Heights, Illinois, and Indiana Harbor, Indiana. Our Chicago Heights plant was served only by Chicago Heights Terminal Railroad, which performs practically all switching service for industries at Chicago Heights. The Chicago Heights plant began operation in 1893. (Tr. 36.) It produces angles, bars, agricultural implement shapes, special sections, and fence posts. (Tr. 37.) The Indiana Harbor plant is on Lake Michigan about 4 miles east of Chicago corporate limits, and was the first plant located at Indiana Harbor, which was the first port established in Indiana on the west side of Lake Michigan. The plant was located there upon assurance that Chicago rates would apply from and to all points, including the Chicago district. Since 1902 this plant has grown rapidly and now operates its own blast furnaces, coke ovens, open hearth furnaces, producing the entire list of iron and steel articles excepting wire nails, tin plate and pipe, which are shipped principally to the Chicago switching district and points in the South, Southwest and West. This plant is served by the Indiana Harbor Belt and New York Central Railroads, the former handling all shipments to and from interchange tracks at the plant. [fol. 1433] Steel production requires large quantities of raw materials, such as iron ore, coal, coke, oil, acid, limestone, scrap iron, brick, machinery, and various alloys, on which railroads receive revenue except as to limestone. A large portion of oil, scrap iron, acid, brick, machinery, etc., originates in Chicago district, which are sold on basis reflecting transportation cost in the purchase price, although

in some instances switching charges are paid by shippers and in others by consumers. (Tr. 37-38.)

The figures as to car movement and revenues shown at the hearing in May, 1928, present a situation entirely different than the one at present as to volume and revenue. (Tr. 38.) Inbound switching records for September, 1926, are not available. Outbound that month we shipped 1044 cars in one-, two- and three-line movements, 82,861 average weight, and average revenue $20.34 per car. In September, 1931, 528 cars were shipped in one-, two- and three-line movements, average weight 82,426 pounds, average revenue $20.76 per car. We shipped 461 cars in March, 1932, in one-, two- and three-line hauls, average weight 82,213 pounds and average revenue $27.88 per car. In the first quarter of 1927 total switching movements, state and interstate, for one-, two- and three-line hauls was 6,806 cars, average weight 87,061 pounds, total revenue $147,036.89; average revenue $21.60 per car, as compared with first quarter of 1932 of 2,728 cars, average weight 86,773 pounds, total revenue $75,458.64, average revenue $27.66 per car. (Tr. 38-39.) On November 1, 1930, the Indiana Harbor Belt discontinued spotting service, since which we have done that under an allowance of $1.85 per loaded car, resulting from a cost study by the accounting committee on terminal allowances. (Tr. 39.)

The cost study in the test week August 4 to 10, 1927, on the Indiana Harbor Belt in Docket 19610 for spotting serv- [fol. 1434] ice at our plant 1 showed $3.21 and at plant 2 $4.03 cost per loaded car. If we had performed this switching service on 26,604 cars during the year 1927, on our allowance of $1.85 per car, the Indiana Harbor Belt's cost would have been reduced $48,795.76. (Tr. 39.) Applying this comparison to all traffic of the Inland Steel Company in 1927 would show a saving of $143,671.10. The Indiana Harbor Belt, due to reduced business, now uses smaller locomotives in switching to and from the plant of the Inland Steel Company than it used during the cost study test period of August 4 to 10, 1927, thereby reducing to some extent its operating expenses. (Tr. 39.) Cars switched within the Chicago district to or from Inland Steel Company plants are accorded identical service with road-haul cars received from or destined to points beyond the district. The cars move in the same trains between plant and

break-up yards of the Indiana Harbor Belt, and were handled in the same manner during the test-study week of 1927. Iron and steel companies buy proportionately less raw materials today, which is reflected in the unit volume purchased. Where in the past commodities might be purchased in multiples of carloads, a single carload or less than carload will suffice for immediate delivery. These conditions make truck handling admirable. (Tr. 40.)

Mr. Davis: My same objections go to whatever is said about trucking movement or water or any other way than all-rail.

Examiner Faul: It will be noted.

Mr. Walter: As to every witness.

Mr. Davis: Yes.

Examiner Faul: It will be so understood.

The Witness (continuing): Trucking costs may equal or exceed switching costs for carload movement, but the saving results from not purchasing larger quantities of materials in carloads, which go far to offset the payment of [fol. 1435] higher trucking cost. These observations relating to raw materials apply equally to finished products to the Chicago Switching District. A compliance with customers' wishes requires prompt delivery of our products and in many instances can be done only by trucks. (Tr. 41.) Comparison of trucking charges and switching charges is of little value because of the different character of service furnished. In a truck, little or no cost for bracing, blocking or wrapping is required. This represents a substantial cost in rail shipments. (Tr. 41.) Trucks are loaded with cranes in one or two lifts; delivery at destination being made a few hours after leaving the plant; railroad delivery requiring two to four days. Truck movement obviates weighing expenses and miscellaneous switching, moving cars between mills within a plant. No demurrage applies to truck movement. (Tr. 41.) These various items add cost to rail movement and when computed, a comparison of trucking rates with switching rates would require the addition of a substantial amount to the trucking rates to offset these costs in handling rail shipments. (Tr. 42.) Since the previous hearing in this case, the establishment of numerous new and improved highways in and about Chicago has caused their utilization extensively in handling

commodities. At the previous hearing in 1928 there was no truck handling of finished commodities of this company by truck; since December 10, 1931, the higher delivered switching cost on finished products which we bear has compelled the rapid increase in the use of trucks, 5,000,000 pounds having moved in the first three months of 1932 to the Chicago switching district. (Tr. 42.) While desiring to patronize railroads, we are in many instances forced to adopt the more expeditious delivery by truck to properly serve our customers. (Tr. 42.) Our products sold in Chicago switching district, require us to pay cost [fol. 1436] of delivery and any increase in rates must be borne by us. (Tr. 42.) Many industries in the district own or contract for truck use in their plant operations to move material to and from the plants thus reducing operating expenses proportionately to the extent to which full time operations may employ this service thereby materially reducing transportation costs because of fixed overhead charges on the truck. (Tr. 43.) There are but three team track deliveries in the Chicago district, involving a two line haul where combined rail charges from Indiana Harbor to connecting line team track and trucking cost from there to the industry do not exceed actual trucking rates we pay, without considering saving from incidental expenses in preparing car load shipments previously set forth. A substantial saving results from the use of trucks as all Chicago industries do not have private sidings. (Tr. 43.) Building construction steel in the Chicago District moved by truck from the railroad to building site can be moved direct from mills at substantially less cost than via railroads to team tracks with trucking therefrom to building sites. Trucking rates from mill to destination do not exceed trucking rates from team track to destination thereby making the rail haul to team track unnecessary. (Tr. 43.) The use of trucks in and about Chicago is increasing; and customers demanding prompt deliveries, which obviates the carrying of large inventories has rapidly increased truck use. If the interstate rates become applicable to intrastate traffic, this additional burden will further divert much of present rail tonnage to the trucks and give lower earnings to the railroads. (Tr. 44.) At the hearing, May, 1927, Docket 19,610, I introduced Exhibit No. 18, showing range of switching rates between in-

dustries in the Buffalo, Cincinnati, Cleveland, Detroit, Pittsburgh and St. Louis switching districts. The rates in these districts are substantially less than apply in the Chicago district for similar switching service. Due to absence of grades, curves, tunnels and expensive bridges in the [fol. 1437] Chicago district permits maximum train load movement, while in Cincinnati, Pittsburgh, St. Louis, etc., there are heavy grades, tunnels, expensive bridges, indicating costly switching operations at lower rates than apply in the Chicago district in addition to higher maintenance cost. (Tr. 44.) No complaints have been filed, nor have the carriers attempted to increase rates in the other districts mentioned since the hearing of Docket 19,610. These rates, though generally much lower than in the Chicago District seem satisfactory to the railroads. (Tr. 45.) We own and maintain all tracks within the plant enclosures of the Inland Steel Co. For the five year period ending December 31, 1931, the maintenance expense was $171,433.51, or an average of $34,286.72 per year. The Lowrey basis minimum in the Chicago district is 60,000 pounds. Outside competitors selling steel in the district have a minimum of 40,000 pounds. This difference in minimum increases competition by enabling customers to purchase smaller car loads from our competitors. (Tr. 45.) Iron and steel are used in many lines of manufacture and initial switching from steel plant to industries in the Chicago district is not always the final movement, as approximately 65% of these commodities are further manufactured and shipped in road haul movement which produces the principal revenue of the railroads. (Tr. 45-46.) Both shippers and railroads benefit by low shipping rates so that there may be no restriction to development of traffic for subsequent road haul movements. Sympathizing with carriers in their desire for increased revenue, yet the facts stated applying to switching rates conclusively establish that higher rates would not create traffic or revenue but the reverse would be the result. (Tr. 46.) The Commission's decision in Docket 19,610 referred to its decision in Docket 17,000, part 6, Iron and Steel Investigation 155, I. C. C. 517, in which a distance scale applying in official territory [fol. 1438] was established on a large range of iron and steel articles commencing at 6¢ for 5 miles and under. Since the decision in Docket 19,610, the commission has

approved substantial iron and steel rate reductions from those prescribed in Docket 17,000, part 6. It has permitted a scale not in excess of 100 miles, commencing with 3¢ per 100 instead of 6¢ previously prescribed and under the circuity permitted, this 3¢ rate will apply for a 9 mile distance and the 6¢ rate for 43 miles distance on road haul traffic. (Tr. 46-47.) These reductions became effective November 10, 1931 under section 6, Permit 108,766 filed October 1931. The switching rate prescribed in docket 19,610 for single line, 3¢ per 100, minimum 60,000 pounds, or $18.00 per car. The iron and steel rate of 3¢ per 100 in official territory, minimum 40,000 pounds produces $15.00 minimum per car, for road haul traffic without limit as to the number of lines handling the shipment and includes all terminal charges at both ends of the haul. (Tr. 47.) The application of the 100 mile scale in official territory indicates that carriers and the commission recognized its necessity to meet truck competition in road haul service. This competition applies with greater force to switching service, as many commodities previously switched by rail are moving almost exclusively in trucks at present. (Tr. 47.) If the carriers will give the same consideration to truck competition now existing in the Chicago district as they have in many instances where they appeal to the various commissions for rate reduction to meet truck competition, further loss of switching traffic is possible but the contrary will result if intra-state rates are increased to the interstate level. (Tr. 47-48.)

In the last three weeks, one of our largest purchasers of sheet steel advised it would not accept car load deliveries of these sheets because it, like others, has probably 20 trucks under contract appearing daily at the plant. If two [fol. 1439] of these trucks remain idle they pay something less than the daily contract rate. The next day if all the trucks are not required, two may remain in the barn the entire day and all they are required to pay is the actual drivers' wages. To the extent that these trucks can be utilized in full time operation, they instruct us to permit them to come to our plant for their sheet steel. (Tr. 48.) Although trucking is not limited to sheet steel, the carriers would have to make a pretty low rate to meet that competition. In my judgment, they could not make a rate that would do that. These conditions are developing all over

the city. The truck movement of iron and steel from our mill is typical of many other commodities from other plants; and to the extent they get maximum service out of these trucks they are benefitting in both directions. (Tr. 49.) The sheet steel referred to by our customer is one of a general line of iron and steel products and not limited to that particular customer. (Tr. 49.) About two years ago we arranged at all our producing mills for truck entrance and their loading by cranes, which was done at the insistent public demand for trucking deliveries, in one respect. Another was, on a car load order of miscellaneous items it necessitated switching cars from one mill to another to complete the loading. This was before handling by truck was possible but today there are not ten cars a year switched in that manner because different iron and steel commodities are collected from various mills by trucks and moved to the point where the car is loaded all in an eight hour day. Under the old method, two or three days were required. Under the new method car detention and demurrage has disappeared. (Tr. 50.) From the consumer's standpoint, he gets a car load movement at least 24 hours earlier than under the old method of handling. (Tr. 51.) From my experience and observation there is less car detention by consignees than when the cost study [fol. 1440] was conducted. (Tr. 51.) Exhibit No. 110 offered in Docket 19,610 was offered by the Witness Vivian. Line 29, Page 1 shows two cars from consignor 1 to consignee 34, routed by the New York Central, Chicago River and Indiana, and Baltimore & Ohio Chicago Terminal, a three line movement, showing rate opposite, 2½¢. The head of the page indicates routing of these cars by industries, shows no lawful intrastate Illinois, 3 line haul rate of 2½¢. (Tr. 52.) The same observation applies to line 70, page 3, from consignor 70 to consignee 1, 14 cars routed by industry lawful rate applicable, 3¢. An undercharge results from that movement. Likewise line 71, the movement from consignor 71 to consignee 12, 5 cars, via Chicago & Northwestern, Chicago River & Indiana, and Pennsylvania, lawful rate, Illinois intrastate, 3¢ per 100. Line 90, from consignor 1 to consignee 2, one car by Indiana Harbor Belt, Chicago & Northwestern and Baltimore & Ohio Chicago Terminal. The rate shown is 2½¢ and the same situation applies there as on previous cars. (Tr. 52.)

Various exceptions to the so called Lowrey basis applies to single line hauls via various routes were established to meet needs of commerce or a particular situation in the territory to which they apply. These excepted rates generally apply higher minima than the Lowrey basis and have been in effect for a great number of years and should be continued in my judgment. The higher the level of rates, the greater necessity there must be for exceptions. (Tr. 53.)

Plant refuse has no value except as waste. There is no district anywhere including a large industrial center in which carriers have not given consideration to moving refuse of no commercial value at rates substantially less than the general level of switching rates. There is no rea- [fol. 1441] son why this practice applied in other territories should be denied to Chicago territory. It is necessary, if manufacturers are to continue. It applies universally to every manufacturer in this territory because he must get rid of refuse and he cannot pay regular switching rates on the commodities. I refer to single line exceptions where they are intrastate and should so apply. (Tr. 53.) I do not know of many applying interstate. These exceptions are generally limited to much less distances than usual switching rates. They were made to move certain commodities between certain industries at a revenue greater than the regular switching rate, though the rate is lower; the haul less, but with the heavier load. (Tr. 54.) There were perhaps, a few of these exceptions effective on interstate movements prior to December 10. We perhaps could use it on scrap iron in the Calumet district, minimum 100,000 pounds. (Tr. 54.) All cars received under load, we load outbound, if suitable. In such instances, no railroad classification is required or made. (Tr. 54.) They are inspected at our plant and if mechanically satisfactory for rail movement, they are used for outbound movement. (Tr. 54-55.)

Q. Now with reference to these exceptions can you state whether or not in your contact with various traffic officers, prior to the commission's decision in the switching case, that they were giving consideration to these matters with an open mind and that since that decision they have fallen back on the decision, declining to take any action looking to any change or modification.

Mr. Davis: I object to that. That does not decide any issue in this case.

Examiner Fall: Proceed.

Witness: What is the question, please?

[fol. 1442] Examiner Fall: Read the question please.

(This was done by the reporter.)

Witness: That is correct.

Mr. Davis: Don't answer before he has a chance to rule. I move the answer be stricken and also the statement made by Mr. Walter on the record, which was in answer to nothing.

Examiner Fall: The witness answered. (Tr. 56.)

Mr. Davis: What is the ruling.

Examiner Fall: The witness answered. The rates are in effect. I do not know that it makes any difference as to what the witness thinks the attitude of the carriers has been since the decision. The decision speaks for itself.

Mr. Davis: I move that the question and answer and also that Mr. Walter's free statement be stricken, as it has no bearing on any issue in this proceeding. (Tr. 57.)

Examiner Fall: I do not believe it will help us in reaching a proper conclusion in this case.

Mr. Davis: I take it that my motion is granted.

Witness (continuing): Effective November 10, 1931, I stated that carriers published a road haul rate of 6¢ for 43 miles on iron and steel. It is based on the circuitous route and includes terminal service any number at both ends of the haul with a 40,000 pound minimum between points in official territory.

This rate would produce $24.00 on the minimum. (Tr 58). At the 3¢ interstate rate, single line in the district, the revenue would be $18.00 on the minimum weight per car. (Tr. 59.) The 6¢ load haul rate applies for joint haul lines. The interstate two line haul rate at the minimum in the district produces $21.00 per car. It may be said that in the commission's decision, Docket 17,000, part 6, average loadings of iron and steel often exceeded 100,000 [fol. 1443] pounds, but the carriers are willing to handle a car of 40,000 pounds at the rate designated. And while the average loading exceeds and did at the time of the hearing in that case greatly exceed what it is today, the carriers nevertheless, will haul these cars at the minimum

weight of 40,000 pounds. Prior to the publication of the 6¢ road haul rate, I attended a joint conference in Pittsburgh with carriers and shippers while it was under consideration. From the various remarks of the various interests, I concluded it was published to meet truck competition solely. (Tr. 59-60.) At the time of the original case, our average loading within the Chicago switching district was around 89,000 pounds per car at present around 82,000 pounds. We are not asking a reduction in the car load minimum of 60,000 pounds though the unit of purchase of all commodities is substantially less than several years ago. Our customers have needs for lighter loads but we prefer to retain the 60,000 pound minimum to give the carriers all possible revenue, if the rates are in line with what we believe will move the traffic. (Tr. 60.) The analysis of our traffic indicates that 2½¢ single line is as high as that traffic will bear, with 3¢ for two lines and 3½¢ for three lines. If those are exceeded, it will divert traffic to competing forms of transportation. (Tr. 60-61.) Subject to the exceptions that exist today, those rates should apply for all commodities. Other than the exceptions applying to refuse material, they were established as commercial necessities many years ago and if those conditions exist today, they ought to be continued. If such conditions do not exist, they should be cancelled and the excepted commodities put on the Lowrey basis. (Tr. 61.) Each exception should primarily be considered by the carrier with its [fol. 1444] interested shippers. It could be done in a few minutes. The Lowrey basis never applied to single line rates. It applied to two or more lines and the exceptions were made by individual lines to meet circumstances and conditions confronting them. They applied in a limited area and if the necessity originally requiring their establishment exists today, they should be continued for single line hauls. Grain was never on the Lowrey basis. (Tr. 62.) We have a plant at Chicago Heights and our proposal of 2½¢, 3¢ and 3½¢ would apply likewise from Chicago Heights to points within the district; the same basis of rates that applies within the district. (Tr. 62-63.)

Examiner Fall: I want to find out from Mr. Hammond why he considers we should have the same rates between Chicago Heights and the district if the hauls from Chicago Heights are considerably longer.

The Witness (continuing): That was gone into quite thoroughly in the original case. Chicago Heights has always had Chicago rates or lower, established for competitive reasons. However, the switching service was defined in the original case and conditions existing there are the same for that movement as within the district. The movement is comparable with the district movement all the way through. We do not propose to change the relationship and the carriers have made no proposal to change that relationship.

Cross-examination.

By Mr. Davis:

Within the Chicago district, the all commodity basis should apply the same on state as on intrastate movement within the district. (Tr. 64-65.) Our car loading in September, 1926 average, 82,861 pounds per car; September, 1931, 82,426 pounds per car, and in 1932, 82,213 pounds per car. Our loads have declined right along because of the lesser unit purchase by users. The 2,728 cars moving [fol. 1445] in 1932 shows average loading of 86,773 pounds per car. (Tr. 65.) There are quite a few other steel plants located in the vicinity of ours in the district. The Illinois Steel Company has plants at South Chicago and Gary. We are in Indiana. The South Chicago plant of the Illinois Steel Company is in Illinois and we are in Illinois, at Chicago Heights. We make nothing at Chicago Heights that we make at Indiana Harbor. The Illinois Steel Company make at South Chicago and Gary the same products that we make at Indiana Harbor. (Tr. 66.) Using a circuitous route from the extreme East end to the extreme Northwest end of the district makes a distance of about 50 miles, for which the 3¢ interstate single line rate would apply. A movement over that road would involve two terminals, one at the beginning and one at the end. I would only guess as to whether prior to December 10, 1931, we had shipments with a plus charge over the Chicago rate such as mentioned by Mr. Holland, in regard to shipments of oil. There were rates there that were plus district rates in certain territories on the North side. These plus charges have been removed. (Tr. 67.)

Examiner Fall: Mr. Hammond, what is the carload minimum you ask in connection with your proposed rates?

The Witness: We were disposed to let the 60,000 pounds remain with rates at 2½¢, 3¢ and 3½¢, which would give the carriers a guaranteed revenue that in view of truck competition should be reasonably attractive to the carriers for switching services. The average loading of our commodities exceeds 60,000 pounds. We intend to load to capacity if permitted to by the size of the order and are not restricted by customers wishes. (Tr. 68.) I said the conditions in the St. Louis, Pittsburgh switching districts were dissimilar to the conditions in the Chicago switching district. I said the rates were lower but that there were [fol. 1446] expensive bridges, tunnels, hills, curves and grades in those other districts, not existing in Chicago; that it tended toward higher switching costs in such other districts. (Tr. 68.) I made no comment on the average hauls within such other districts. The hauls may be longer in the Chicago district but the operations must be less than in the other districts. (Tr. 69.)

G. H. Staat, called by Complainants, was duly sworn and testified.

Direct examination.

By Mr. Walter for Complainants:

My residence is Cleveland, Ohio, and I am familiar with the issues in this case and have prepared a statement of my testimony. (Tr. 70.)

I have been engaged in traffic work 28 years with the old Chicago, Milwaukee & St. Paul, traffic department for nine years and the balance as assistant traffic manager, traffic manager and sales agent of Pickands, Brown & Co., and assistant manager of the Inter-Lake Iron Corporation and since January 1st of this year, have been traffic representative of Pickands, Mather & Co., and traffic manager of Inter-Lake Iron Corporation with offices in Cleveland, Ohio. The Inter-Lake Iron Corporation has a coke oven plant and blast furnace in the Calumet district in South Chicago, Illinois. The coke oven plant is at 112th St. & Torrance Ave., on the Chicago Short Line and the blast furnace is at 108th St., and the Calumet River on the Indiana Harbor Belt and Pennsylvania Railroads. (Tr. 71.)

At the coke oven, we own and maintain tracks used by the Chicago short line and the tracks at the furnace plant owned and maintained by us are served by our own locomotives [fol. 1447] receiving a terminal allowance for that service. (Tr. 71.) From the coke oven plant, we ship coke, tar, light oil, sulphate of ammonia, ammoniacal liquor, while our main receipts are coal. From the furnace plant, shipments are pig iron and slag and receipts are coke, coal, clay, flue dust, ore, limestone and sand. (Tr. 71.)

Coke oven coal comes largely by vessel. We get in three months by vessel a supply that would require a five month period by rail. Our ore moves by vessels, while coal for the furnaces is all rail. At present, we get limestone locally at a rate of 40c per net ton, which would come in by vessel or truck if the proposed interstate basis of 60c for single line hauls was established on Illinois state traffic. (Tr. 72.) We get refuse flue dust from Chicago, West Pullman and Southern Railway, on combination rate of $6.50 per car to that company and $8.10 per car to either the Indiana Harbor Belt or the Pennsylvania railroad, totaling $14.60 per car, which would without question move by truck if the rate of 70c becomes effective per net ton. (Tr. 72.) We have made an exhibit comparing the volume of shipments for September, 1926, with September, 1931, and March, 1932, which we offer as Exhibit No. 2, the same received in evidence, marked "Complainants Exhibit No. 2, Witness Staat." Exhibit is entitled "Shipments by Inter-Lake Iron Corporation of coke, pig-iron, sulphate, ammonia, ammoniacal liquor, tar and light oil in tons, for the period mentioned above, showing one line haul in cars in tons, two lines and three lines respectively." (Tr. 73.)

The exhibit separates these to cover the cost test period in August 1927, for the Baltimore & Ohio, Chicago Terminal, the Belt Railway, Chicago, Milwaukee, St. Paul & Pacific, the Elgin, Joliet & Eastern, the Indiana Harbor Belt and the rest of the roads for other periods contrasting those loads with the average for 1927 with average weekly loading for the first 3 months, 1932.

[fol. 1448] The first three months of 1932, we shipped 28 cars of pig iron weighing 1,342 net tons intrastate and to interstate points, 1 car load, 64 net tons; there being no shipments of coke and other materials for these deliveries within that period (Tr. 73); 306 cars of coke weighing 9,823

tons moved two line intrastate; 21 cars of pig iron, net weight 1,179 tons, 4 cars of other material weight, 124 net tons, or a total of 330 cars, weighing 11,126 tons; while to two line interstate points were moved 52 cars of coke, weighing 1,573 net tons and 5 cars of other material weighing 189 net tons. (Tr. 74.) Our 3 line intra state deliveries for that period were 1,544 cars of coke, weighing 51,109 tons. 3 cars of pig iron weighing 171 net tons, 184 cars of other material, weighing 7,824 net tons, total intrastate 3 line shipments, 1,731 cars weighing 59,104 tons. Interstate 3 line shipments were 143 cars of coke weighing 4,885 net tons.

For the first three months of 1927, our one line intrastate shipments were coke 585 cars, weighing 26,353 net tons; pig iron 91 cars weighing 4,804 net tons, total 676 cars weighing 31,157 net tons; 1 line interstate shipments were, pig iron 57 cars, weighing 3,388 net tons. (Tr. 74.) In this period, 2 line haul intrastate shipments were coke 1,020 cars, weighing 32,108 net tons; pig iron 239 cars net weight 12,299 net tons and other freight 38 cars weighing 1,364 net tons, total, for two line intrastate hauls 1,297 cars, weighing 45,771 net tons. The interstate movements for 2 line hauls were; coke 903 cars, weighing 28,188 net tons and pig iron 2 cars, weighing 92 tons, a total of 905 cars weighing 28,280 tons. During that period, 3 line Illinois intrastate hauls were coke 2,406 cars, weighing 76,611 tons; pig iron 7 cars, weighing 272 tons, other material 272 cars, weighing 12,092 tons or a total of 2,685 cars, weighing 88,975 tons. The interstate three line haul business con- [fol. 1449] sisted of 1 car of coke weighing 31 tons. (Tr. 75.)

These comparisons between the first 3 months of 1927 and of 1932, shows that in the 1932 period there was a very material decrease in 1, 2 and 3 line intrastate hauls and on 1 and 2 line interstate movements, compared with the 1927 period but on 3 line interstate hauls there was an increase in movement. The service on our purely Chicago switching district shipments today is the same as that on shipments to destinations beyond the city of Chicago and the present day service is substantially that performed in prior years. (Tr. 75.)

There is a steady movement of pig iron from all furnaces to the Republic Steel Corporation adjacent on the South to which we now pay 40¢ per gross ton, minimum 100,000 pounds. If this rate is increased at 67.2¢ per gross ton, it is not an idle statement to say that we would either truck it the few blocks, or extend our yard tracks into the Republic plant and move it with our own power, and the Indiana Harbor Belt and Pennsylvania Railroads would lose a revenue of at least $18.00 per car on each car so handled. (Tr. 76.) Using 5 years previous shipments, shows a movement of 52,278 tons or revenue of $20,911.20 for 1927, 73,417 tons for 1928 or revenue of $29,368.80; 1929, 70,579 tons, at 40¢ per ton, revenue $28,231.60; 1930, 36,192 tons or revenue of $14,476.80; 1931, 13,797 tons, revenue $5,518.80. This amount will be lost by the carriers if the rate be increased as proposed. (Tr. 76.)

If the tonnage of 1927, 1928 and 1929 should return, the average revenue for those three years of $26,171.06 would be actually lost to the railroads as against their gain of additional revenue of $17,796.32 per year under the increase proposed. This increase would not come to them if a rate of 67.2¢ per gross ton should be substituted for the present 40¢ rate. (Tr. 77.)

We have a daily movement of Tar to the Barrett Co., on the West side, now moving via Short Line, Belt Railway [fol. 1450] and Chicago & Illinois Western Railway at 2½¢ per 100 pounds but being a 3 line haul, would be advanced to the suggested rate of 4¢ per 100; an increase of 30¢ per ton which I told you, as Mr. Roberts, traffic manager of the Barrett Co., said in the preceding hearing, would with that increase, move in their tank barges. Our daily coke requirements for our blast furnaces formerly moved daily by the Chicago Short Line and Pennsylvania railroads on 50¢ per net ton, 2 line rate, which was too much of a burden for the furnace and for some time we have used trucks and find that for the haul of 4½ to 5 miles per round trip costs not more than 18¢ per net ton. (Tr. 77.) We were trying to help the railroads out in this service by suggesting 30¢ per net ton. The carriers now say they should have 70¢. (Tr. 78.)

In handling materials from ovens to furnaces we first used our own trucks August 16, 1930, to transport coke breeze. This was intermittent until August 27th, when we saw its

advantages, and since it has been carried on regularly. Between August 16, 1930, and April 1, 1932, we have moved 48,830 tons of coke breeze at a cost of 18 cents per net ton. (Tr. 78.) The average load of 12 tons per truck permits movement of approximately 150 tons per day. The round trip haul is 4½ miles. In the 19½ months' period coke breeze production averaged 2452 tons per month, with the heaviest production in December, 1930, at 4120 tons. We did this with our own truck used for general purposes in and out of our plant. It did not handle furnace coke to the furnace plant. (Tr. 78.) On June 16, 1931, we started handling regular furnace coke by truck under contract. Between June 16, 1931, and April 1, 1932, we moved by truck 100,042 tons coke, monthly average 10,530 tons; heaviest loading month 14,153 tons October, 1931. (Tr. 78.) The average truck load was 7½ tons; average daily movement [fol. 1451] approximately 800 tons for 107 truck trips taking 14 to 16 hours per day, with round trip haul of 5 miles at a cost not exceeding 18 cents per net ton. (Tr. 79.) With normal business furnace coke would average 950 tons per day by truck.

If the flue dust rate is increased to 70 cents per ton we could turn this business over to the contract trucks at a rate materially lower than 70 cents a ton. (Tr. 79.) It is about 15 city blocks from the loading point of flue dust to our unloading point, a round trip of slightly less than 4 miles. (Tr. 79.) We operate coke ovens and blast furnace plants at Duluth, Minnesota, Toledo, Ohio, and Erie, Pennsylvania. At Duluth we are served by the Northern Pacific Railway, but have our own plant facilities and receive an allowance. The Wheeling & Lake Erie & Toledo Terminal serve our Toledo plant, at which we own our plant facilities and receive a terminal allowance. At Erie we are served by the Pennsylvania and our own power, but we receive no allowance. (Tr. 80.) In the Duluth switching district it costs but $8.10 to switch a car to the most distant point on the Northern Pacific through a congested terminal that would be very expensive in operation by reason of grades, etc. (Tr. 80.) At Toledo the same thing is more or less true, with charges, pig iron, 25 cents per gross ton, coke 38 cents per net ton; two-lines, 45 cents net or gross, and three-lines 54 cents net or gross. At Erie the separation of Pennsylvania Railroad's lines

east and west obtains, the dividing line being State Street. We are east of State Street. Pig iron rates to all industries on the Pennsylvania, New York Central, the N. K. P., are 25 cents per gross ton, minimum 40 tons; on coke to Pennsylvania Railroad east of State Street, 25 cents per net ton, minimum 30 tons; to Pennsylvania Railroad west of State Street and to New York Central or N. K. P., 38 cents per net ton, minimum 30 tons.

[fol. 1452] The distances in the Toledo district to which the 38 cent per net ton rate applies are as high as 25.9 miles for a one-line haul. (Tr. 82.) A two-line haul for that distance would be 45 cents, a three-line haul 54 cents per gross or net ton, minimum 30 tons. These rates also apply to team track deliveries on all lines. (Tr. 83.) In the Duluth district all rates are zoned and we pay on pig iron and coke 24 cents per net ton, minimum $6.30, and we pay 36 cents per net ton or $6.30, per car minimum. There are varying rates in the different zones, but the highest is 36 cents per net ton, minimum $8.10 per car. (Tr. 83.) Rates of pay, detention expenses and terminal expenses are all more or less uniform in the districts mentioned. Compared with the rates and services in the other switching districts, the proposed rates in Chicago are uniformly too high. (Tr. 84.) At Milwaukee the Chicago & North Western and Chicago, Milwaukee & St. Paul railways, serving as great or greater area than these roads serve in Chicago, publish a switching rate of 2 cents per 100 pounds, minimum 60,000 pounds, between all industries, and 2½ cents, same minimum, between industries from one line to the other. (Tr. 84.)

The Chicago, Milwaukee & St. Paul has 514 industries in their Milwaukee switching district and 539 in Chicago. (Tr. 84.) At Cleveland there are greater terminal operating difficulties than in Chicago. The Cuyahoga River Valley district, the principal manufacturing district in Cleveland, is unlike anything in the Chicago district. The lake front operation in the district is more like that in Chicago, although at Cleveland heavy grades are encountered, with heavy movement from the lake front of coal and ore, which Chicago does not share in comparison. (Tr. 85.) The carriers at Cleveland classify locations as lower flats, central flats, upper flats, lower grade, upper grade, river district, all of which indicates the character

[fol. 1453] of the district as a whole. (Tr. 85.) The New York Central Railroad is the largest switching factor in the city. Its switching district, east and west, covers 20 miles, and 8 miles north and south, with 500 listed industries having private switches. (Tr. 86.) There are probably a hundred more industries not listed.

There are movements for these extreme distances. The New York Central's rate is 38 cents per gross or net ton, minimum 25 net or gross tons; resulting car charge of $9.50 on a 25 net ton basis or on a 25 gross ton basis. In Chicago the charge would be $16.80 for 30 gross tons for a two-line haul. The New York Central's Cleveland two-line haul is 50 cents per net or gross ton as rated, minimum 25 net or gross tons resulting in minimum charges of $12.50 per car. In Chicago the two-line haul rate, minimum 30 net tons, revenue is $15.00 per car; on 30 gross tons the car revenue is $16.80. (Tr. 86.) The Cleveland three-line haul is 50 cents per net or gross ton as rated, plus $3.60 per car, making minimum per car revenue $16.10. The minimum in Chicago for a three-line haul is $18.00 per car on a net ton basis, and $20.16 on a gross ton basis. In Cleveland a three-line haul on a 50 gross ton car of pig iron produces $28.60 per car revenue. In Chicago the revenue would be $33.60. (Tr. 87.)

If the proposed rates in Chicago are established they will exceed the Cleveland switching rates by 22 cents per net ton, or 29.2 cents per gross ton for one-line hauls. For two-line hauls they will exceed the Cleveland rates by 20 cents per net ton and 28.4 cents per gross ton; for three-line hauls they will exceed the Cleveland rates by 15.6 cents per net ton or 25.2 cents per gross ton. (Tr. 87-88.) All figures referred to here are without the addition of the emergency charge.

What I have said with reference to the New York Cen- [fol. 1454] tral at Cleveland applies to all of the other lines operating in the terminal. (Tr. 88.) In some portions of the Cleveland district certain industries require constant use of pusher engines, due to the grades encountered. On the New York Central four of such engines are in daily operation. (Tr. 89.)

Based on the pig iron tonnage from our Federal plant at Chicago from 1927 to 1931, inclusive, the increases proposed would have cost us $24,276.71 per year, while on

coke, using the years 1929, 1930 and 1931, it would mean $72,208.90. (Tr. 89.) These figures do not reflect the increases on outbound tar, light oil, sulphate of ammonia, ammoniacal liquor and others, or on inbound material at the coke plant, or on inbound limestone and other materials to the furnace plant. (Tr. 89.)

Our outbound loading is easily over 60,000 pounds except on coke. In the first three months of 1932, 2,045 cars of coke moved to Chicago district points. Of this number 1,518 cars were over 60,000 pounds and 527 below that figure. (Tr. 90.) Those under 60,000 pounds averaged 28.73 net tons. Those over 60,000 pounds averaged 34.48 net tons. Average loading of 2,045 cars, about 33 net tons. (Tr. 90.)

We have always understood that movements from our Federal furnace plant over the Pennsylvania to its Colehour yard constituted an intrastate movement, and since December 10, 1931, we have not changed in any respect our handling of material from our furnace plant. Whether routed Indiana Harbor Belt or Pennsylvania they have been billed the same. (Tr. 90.) As to industries on the Baltimore & Ohio Chicago Terminal, we have specified on billing, "Via Illinois State Route." (Tr. 91.)

Vivian's Ex. 110, covering alleged routing by industries to avoid interstate rates, filed in Docket 19610, on Illinois State movement, shows on page 2, line 40, shipment, consigned No. 4, Marblehead Lime Company, to our company [fol. 1455] coke oven on the Chicago Short Line. We made no request to the lime company to route this material via any specfic route or junction, as Baltimore & Ohio Chicago Terminal Tariff, I. C. C. No. 397, permitted the handling of this shipment intrastate. (Tr. 91-92.)

On line 55 we are shown as consignor to Illinois Malleable Company of a pig iron shipment. The billing shows no routing, though it apparently moved interstate. (Tr. 92.) The same is true as to line 96 covering the shipment of pig iron via Chicago, West Pullman & Southern. On page 4, line 105, shows a shipment we made to the Elizabeth Street foundry via the Pennsylvania Railroad direct; line 109, a shipment we made to Butler Street foundry, Pennsylvania, 31st Street team track delivery, in the billing of which no routing was indicated. (Tr. 92.)

Mr. Davis: What is the object of the exhibit and testimony of that kind?

Mr. Walter: To show the manner in which the movement is handled at the present time and has been handled since December, 1931. They name the rate. Each one named the rate which is in effect via the intrastate route. (Tr. 93.)

The Witness (continuing): Since December 13th to March 3, 1932, we have moved from our Chicago Heights furnace plant 13 truck loads of pig iron that I presume resulted from the increase in the 40-cent rate. These moved since December 10th, and were all gross tons. (Tr. 94.)

Cross-examination.

By Mr. Davis:

My experience has been in traffic work and in the sales department. I was never in the operating department of the Chicago, Milwaukee & St. Paul, the Interlake Iron Corporation, or Pickands-Mather & Company. I never operated trains for any company in Cleveland. (Tr. 95.) My information was derived from the tariffs and what I have seen in the towns mentioned. We do not designate routing on shipments from our Chicago plant to points within the Chicago district on the Illinois side, or specify state rates. The four instances mentioned in reference to Vivian's Ex. 110 show the only shipments made by us, and routes or rates are not specified. (Tr. 96.) We ship coke to the north side of the Chicago district from our South Deering [fol. 1456] plant. We would route that through Indiana in order to get the interstate rate, but we do not route it interstate. (Tr. 96.) We specify via Short Line, Baltimore & Ohio Chicago Terminal, with delivery through interstate junction. Prior to December 10, 1931, we routed those shipments via the Belt Railway of Chicago as intermediate carrier, which made a considerably shorter route. (Tr. 97.) In referring to shipments on Ex. 110, I did not mean to infer there was no routing. I meant to say there was no route specified on the bill of lading. On these shipments we prepaid on the basis of 2½ cents per hundred pounds, which is the intrastate rate. (Tr. 98.)

Redirect examination.

By Mr. Walter:

These bills of lading specify the Pennsylvania and Chicago & North Western routing, which could be handled via the interstate route through Colehour, which is shown on the map as in Illinois, but is now claimed to be in Indiana. Before we knew we could move the shipments mentioned by truck at 18 cents per ton we said a 30-cent switching rate would move that business, but since we learned of this truck movement at the 18-cent rate, I am afraid there is no rate the railroads could make that would give them that traffic. (Tr. 99.) That door is closed as to the movement of pig iron to the Republic and a lot more down there. I merely cited the Republic in my direct testimony, but there is considerable more in the same district that could be involved in the same way. (Tr. 100.)

We have always endeavored to load coke to car capacity in order to reach the minimum 60,000 pounds; but in the 1932 movements mentioned there were some 530-odd cars which would not load to the 30-ton minimum. We think the 2½ cent single-line rate is too high, based on the volume [fol. 1457] that moves. We are still moving it at 40 cents cost because we do not want to set up a lot of equipment, but would have to if the rate went to 70 cents a ton. (Tr. 100-101.) The Illinois intrastate rates are lower than the present interstate. We would like to have the intrastate rate apply interstate. (Tr. 101.)

Roy W. Fletcher, called on behalf of complainants, was sworn and testified as follows:

Direct examination.

By Mr. Walter:

I am a statistician and selling accountant with office in the Daily News Building, Chicago.

Transcript of the record shows the following notation: "The experience of the witness in railroad accounting and statistical work is stated in the record in Docket No. 19610,

pages 3051 to 3056, both inclusive; there follows in this record, to and including page 163, direct and cross examination on pages 1 to 28, both inclusive, of Ex. No. 120 in Docket 19610." (Tr. 102.)

I have prepared an exhibit marked for identification as Ex. 120. (Tr. 103.) The Saur-Coverston formula under which the Chicago switching case cost study was conducted, and upon which the costs so arrived at were based, assigns engine time to classes of service or zones, according to a predetermined arrangement. As these car movements are scattered over the district, move in different directions, on different tracks, for different distances, on different railroads, it is necessary that all expenses involved be allocated to different zones, so that cars moving under these zones [fol. 1458] be charged with the expense. (Tr. 103.) Under the formula, after assignment of engine time, the next step is to proceed with average cost per engine hour, which brings every class of service to one base, treating every class of service alike. It is all right to take engine time to divide engine crew wages and engine investment in that time, but other costs necessitate localizing the cost of each movement if it is to be charged with its proper share of expense. (Tr. 104.) Taking an average and charging that to every district movement is improper.

Mr. Davis: I object to this testimony; it is a criticism of the formula, reiterating what they claim to be errors in the other case, which has already been decided, and has nothing to do with the record regarding discrimination as between interstate and infrastate shipments in this case. Ex. 120 is practically a reiteration of Ex. 13 introduced by Mr. Fletcher's predecessor. (Tr. 104-105.)

Examiner Eaul: The exhibit in a large part goes to the question of the reasonableness of the rates and might be more proper to be introduced in the complaint case rather than the Section 13 case. The first 29 pages involve reasonableness of the rates. The remaining pages refer more to the Section 13 case, but the exhibit seems to indicate it is primarily an exhibit which should go into the complaint case. (Tr. 105.) The witness may proceed and we will rule on the evidence as we go along. (Tr. 108.)

The Witness (continuing): In the class rate and livestock cases for Western trunk line territory I testified that cost

as generally assigned to different territories was not generally reliable for the purpose of building up costs for the purpose of a rate base. (Tr. 108.)

Mr. Davis: Is that all you have on your preliminary statement? (Tr. 109.)

[fol. 1459] The Witness (continuing): I am going to take up the different stages of the cost as used in this cost study and point out certain reasons why I think they do not represent reasonable assignments.

Mr. Davis: That is, in your exhibit?

A. Yes.

Mr. Davis: I move, then, that all this witness has said in regard to the formula or that he did in some other case be stricken from the records as not germane to the issue.

The Witness (continuing): It is to show that the Burlington Railroad and other carriers have filed their cost reports with the Commission under arbitrary rules, which costs were criticised by me and other accounting witnesses for the railroads to show that they are not reliable. I engaged in this cost study for the Burlington and am going to point out that further refinements in the basis would have produced different results.

Mr. Davis: I insist on the motion.

Examiner Faul: In so far as his testimony does not separate interstate from the intrastate traffic, I repeat that it will be primarily considered as evidence in the complaint case. In so far as it deals with the intrastate feature it of course relates to the Section 13 case. (Tr. 109.)

The Witness (continuing): On pages 1 to 4, dividing expenditures used in the cost study among 4 groups, shows the results for individual roads that were considered in connection with the cost study. The first group are expenditures directly proportioned to time required to perform switching service, covering time of yard conductors, brakemen and yard engines; and if crew wages on all types of engines are the same, and eliminating cost of subordinating switching service, then the estimate of cost is as accurate as can be desired. (Tr. 110.) The source of the [fol. 1460] information is Carriers' Ex. No. 2 instead of No. 4. The exhibit should be changed at the top of pages 1, 2, 3 and 4, referring to Carriers' Ex. No. 4 in the second line, to Carriers' Ex. No. 2. (Tr. 110.)

The second cost group, Identified Expenditures Effected by Both Time of Service Required and Performed, includes locomotive repairs and locomotive depreciation, shop machinery outlays, and other maintenance equipment, as a single group in connection with locomotive repairs. The difference in types and sizes necessitates dealing with the individual locomotive performing switching service in the different zones, the heavier types being generally used in classification yards. (Tr. 111.) A normal repair showing necessitates averaging cost over a representative road, as heavy or shop repairs go in cycles; and it would be necessary for a fair representation to have shop expenditures with the miles or hours of service for the different locomotives. (Tr. 111.)

The next group covers fuel for locomotives and maintenance of fuel stations. Different sized locomotives performing different grades of work do not use the same quantity of fuel. Railroads with which I have been connected have allocated locomotive fuel costs on the basis of miles and fuel consumed by locomotives of different types in different classes of service. It is believed such plan more appropriately apportions assigned costs to the use of locomotives in different services. In the Chicago switching case they average, over the whole district, the locomotive fuel costs except certain roads which dealt with different subdivisions. The Pennsylvania and Indiana Harbor Belt have three subdivisions, the Illinois Central 2, and the Burlington 2, but no distinction was made in single groups as to service performed at different locations. A practical test of locomotive fuel consumption can be made in different services. A practical method to determine fuel cost [fol. 1461] for switching service as against road service is to place men on the locomotives to count the scoopsful of coal used on a given trip, and weighing the average scoopful used in each class of service. (Tr. 112.) This method could have been used in the Chicago switching district. (Tr. 112.) The carriers did not separate the fuel used by individual locomotives and allocate it according to use.

The next group covers engine house expense and shop expense of exclusive switching roads, with a proportionate part of all trunk line carriers' engine house expense that would be assigned to locomotives engaged in switching service. A proper assignment of engine house expense as

between road and yard locomotives is very important. Mr. Vivian in one of his cost studies has considered yard locomotives in switching service receive about one-half the engine house service given road locomotives. (Tr. 113.) I do not mean that Mr. Vivian followed that difference in engine house service in this case. Mr. Oliver, in preparing his exhibit, had access to all working papers so far as the Burlington was concerned, but they have been denied to me in this case. The fact remains that engine house service is less for yard service locomotives than for road haul locomotives; and if that is so, engine house cost is over-stated. (Tr. 114.) Water supply, etc., go along with the type of locomotives in consumption of fuel and the use of an average cost per engine hour is not proper.

The next group is identified as Expenditures Assignable Directly to Zones of Service and Prorated to Cars Handled in Such Zones. (Tr. 114.) The carriers include in this group items of supervision of roadway and track, yardmasters' clerks, yard supplies, and yard switching signal tenders. (Tr. 115.) Under the formula covering time at industries, traffic is generally higher than in other [fol. 1462] service; in application of the general average there have been transferred costs from points where maintenance is incurred to points where maintenance is not incurred, that should not be included. Where tracks at industries are owned by shippers, the use of average engine-hour cost puts on that service a proportionate part of the maintenance; but if that cost is charged to general service, the maintenance cost assigned to industries where carriers own the property will be slightly higher. (Tr. 115.) In classification yards with substantial track mileage, maintenance would be substantial, with substantial investment, but under the carriers' plan of building up average engine-hour cost and spreading it over territories, the industry service is made to bear an exact proportion of a time basis. It is not on a classification rate. We have no showing of mileage of industry tracks or mileage of classification tracks, but the study shows much time charged to classification elements in connection with car movement; careful study of this should be made and expenditures localized as to zones and cars handled in those zones should be charged to that expense. (Tr. 116.)

The next group covers expenditures not included in groups A, B or C, which I claim should not be considered in a comparison for the purpose of a cost study. (Tr. 116.) The full amount of repairs to equipment should not be included. Operating expenses include retirement of equipment, representing difference between book value and amount charged for depreciation, and salvage allowance; which loss or credit is properly a deposit to the prior period except for the small part put to the period under consideration. (Tr. 116.) Under the cost study pro-rating general expenses on the dollar basis is not right. (Tr. 116.) As every dollar for labor or material or miscellaneous expense has the same weight. Certain expense items might [fol. 1463] increase, others might not, and using the dollar basis tends to offset the relationship. (Tr. 116-117.) I will point out an item where that might be brought about. I had occasion in the parcel post case to study the apportionment to railways for cars, postal cars.

Mr. Davis: I object to the testimony that Mr. Fletcher is giving. If he has figures demonstrating the conclusions he is attempting to reach, they might be of some help to us but there is no way of cross examining him on such conclusions without giving figures.

Mr. Walter: He is just now going to give another case to show his experience on that.

Mr. Davis: I want the figures to check him on.

The Witness: I will make a statement in this connection by saying it is not wise to give figures in these cases; it will be necessary to revamp the whole cost study from start to finish. (Tr. 117.)

Mr. Walter: That is one of the things we are going to insist on; that they must do.

Mr. Davis: That is getting back to the same question raised here early in the hearing. He has asked the Commission at least three times to open the cost study, which has been denied and now through this witness and exhibit he is trying to accomplish what has already been denied.

Mr. Walter: When you filed your petition for an order in the 13th section, you presented an issue which has to be decided and to be decided, you will have to consider the cost formula.

Examiner Faul: The witness may proceed. It is possible at the conclusion of his testimony it may be necessary to

take it bodily out of the case and put it into the complaint case as I believe it applies principally to interstate rates [fol. 1464] established by the Commission and the Commission has, with two or three motions, refused to reopen the investigation. (Tr. 117-118.)

Mr. Walter: That is true, but it is proper to state here that this formal complaint and the 13th section case, one or the other, or both, will compel the Commission to again open its mind as to what the lawful rate ought to be, state and interstate, in the switching district wherever the evidence is pertinent. (Tr. 118.)

Examiner Faul: The witness may proceed.

The Witness: Referring to the parcel post case, the general overhead expense of the Postal Department at Washington, was considered in the transportation of postal cars, and if railroad payments increased 25%, that was automatically treated for that service on a dollar basis as a proportion of the overhead. There is a substantial part of general expense charges that serve no connection with switching service, such as passanger accounting expenses, car accounts office, etc. These things are not done for the switching service and should be eliminated before prorating general expenses is undertaken. The only difference between pages 1, 2, 3 and 4 is that they deal with separate lines and there is a summary on page 2 showing percentages of expenditures for the 15 roads that would fall in the four groups. (Tr. 119.) In the first group, there is about 36%. In the second, about 33, in the third, about 27 and general overhead, 3. Item 28 on page 2 shows 2½% of the cost included in group C which relates to signal interlocking and crossing protection, all thrown into the general average and carried to the different branches of service on uniform roads. (Tr. 120.) Certain services do not get to the industry in connection with inter-locking or signal expenses connected with transfer service or main line service on the 8 roads; and throwing part of that into industry [fol. 1465] service is not proper. It should be charged to the part of the track or the operation benefitting from those services. (Tr. 120.) After an engine leaves the track protected by those signals, it should not share in the signal cost because cost arrangements for different movements should be confined to the items of expenses properly included in the specific movements. (Tr. 120.) Pages 5 and 6 show

items of expenses classified as optional accounts and expense items not mentioned in the formula. (Tr. 120.) The shippers' representative agreed to raise trunk line cost to the 100% basis by applying the carriers 90.8% relationship. Before comparing the switching road with a trunk line, carrier, there must be comparability between the two. The steps taken by shippers' representative in the original case in these respects, I do not know, but I show on page 6 that there are substantial items. (Tr. 121.) Take traffic expenses. Charging traffic expenses on a one line movement on the same basis as a 3 line movement or as between an inter-district movement involving a road haul does not appear proper to me. The record does not disclose freight loss and damage expense of switching movements that are comparable to the road haul; and no showing as to class of traffic or its value. These two pages show the items included in boosting the trunk line costs 9.8%. (Tr. 121.) Page 7 shows cost reported and its expansion for trunk line carriers and the relationship before and after expansion. (Tr. 121.) Page 8 continues that and line 14 shows these additions to trunk line carriers costs amounted to $15,763.97. In proving relationship between switching roads and trunk lines when it comes to items like dispatching trains on switching roads where there is a substantial transfer movement or main line haul care has to be exercised in not charging that expense to industry service which that service does not reach. (Tr. 122.) Page 9 shows data [fol. 1466] taken from statistics of railroads in the United States showing a proportionate part of operating expenses applying to labor and other items. It shows about 60% of operating expense is for labor. (Tr. 122.) Page 10 shows labor cost for individual roads identifiable in carriers exhibit 2 which shows approximation of reduction in costs on basis of present rates of pay. Applying the 60% basis to the total in column 2, we have about $496,000 and a 10% reduction in pay would reduce the cost for the week of all switching roads about $50,000. (Tr. 122.) Confined to actual labor charges shown in column 7, there would be an increase of about $36,000. Page 11 shows costs of fuel or costs of ties included in switching cost report in exhibit 2 for the different railroads, which lays foundation for applying fuel cost figures shown by page 12. Page 12, item 18 shows 1926 fuel cost was 10% lower in 1931 and cross tie

reduction 2%. Page 13 shows time spent by different roads as reported against the several classes of service including classification transfer, interchange, etc., with ratio of time for different items to the total. They vary for the different roads. Some are high in classification and transfer, and some high in industry service. The reference at the top should be to Exhibit 4. Page 14 shows number of cars handled by different roads conducting cost study for the different classes of service and relation of total for each item to the service for the road. (Tr. 123.) This shows quite a spread as between individual roads and between individual classes of service. Page 15 shows average per car cost for the different classes of service on cost study roads and relationship and ratio of each item to average cost. The average cost is a weighted cost. On the lower part of the page appears average per car cost and relationship of each item to the average for the several classes of service [fol. 1467] which shows quite a marked difference. Classification service shows as much below the industry and the individual as much above, the average for all services. If average engine hour costs is spread over the territories on basis of time, we might as well lump all cost studies and deal only with averages and both would be wrong. To have a cost study that is a fact, you must get down to class refinement throughout the study. (Tr. 124.) Page 16 shows different items of general expenses included in average engine hour costs for the several roads, which vary as between the roads. I have separated maintenance of way and structure costs between tracks and others, and have separated general expense cost between maintenance of way and others to arrive at an average cost weight that we might consider for application to the switching time at industries if we knew the time when the industries maintained the track. (Tr. 124-125.) Column 10, page 16 shows average engine hour cost for industrial service before expanding the cost from 90.8 to 100% for trunk line carriers and not including some offsetting adjustments resulting from higher maintenance cost for industries where carriers maintain the tracks. (Tr. 125.) On this page, item 6 shows carriers general engine hour cost basis for deviding expenses under joint service as $9.88. Item 8 shows $10.33. This cannot be said to be comparable because you have to upset everything to adjust this. (Tr. 125.) I don't know

what is included in the $10.00 per engine hour cost you refer to, whether it includes allowances for use of property, engines and tracks, but it is certain these costs do not include anything but operating expenses. Even if the $10.00 cost referred to included all expenses of operation and capital of carriers performing the service, none of the columns on my exhibit are comparable with that cost. All these costs would be increased if item No. 9 shows correct costs, and [fol. 1468] if the carriers were willing to take $10.00 as engine hour costs then all these costs shown would be excessive. None of the columns show items embraced in the $10.00 charge, assuming they get all the expenses to which capital and operation contribute because none of these have any allowance for use of property. (Tr. 126.) There is no basis for comparison because this is a general average and that is a specific charge for a certain service at an industry. (Tr. 126.) Page 17 shows excerpts from the Sauer-Coverston formula, showing that the termination of terminal cost in connection with road haul movements, yard tracks are not to be given the same weight as maintenance expenses for main line track but in the Chicago district switching study everything was on the same basis. (Tr. 127.) The carriers claim they include no trunk line charge for maintenance of main line tracks not used wholly or partly in switching service. But if we had the mileage of the tracks in the different zones, it appears possible to make arbitrary adjustments on the basis of differentials; because apparently, main line tracks used for transfer service are high class tracks of the company with a higher investment and these things must be considered in arriving at cost.

On the lower part of page 17 is set forth an excerpt from final valuation report on the Illinois Northern Railroad. "The carrier takes exception to omission from the tentative valuation of certain spur or side tracks leading to industrial plants. The tracks were paid for by the industry and are on land owned by them." And "The carrier argues that if the omission of these tracks is approved the result will be that the revenue earned by service over them will be subject to the recapture provision of the act, while their value will be excluded from the basis upon which the re- [fol. 1469] capturable excess earnings will be computed."

This indicates that industrial tracks owned by industries are substantial. (Tr. 127-128.) Page 18 shows mileage of switching roads in their annual report to the Illinois Commerce Commission. These reports indicate tracks that are main line, first, second, third and fourth and those classified as industrial tracks, yard tracks and sidings. Only the Indiana Harbor Belt reports industrial tracks. These reports are for the year 1926 and were used because we are dealing with the year 1926 in the Chicago switching case except as to switching costs where the study week was in 1927. (Tr. 128-129.) At the bottom of page 18, we show percentage that tracks classified in carriers reports to the Illinois Commerce Commission bear to the total if readjusted on the basis of taking 3 miles of yard track as equivalent to 1 mile of main line track. It makes quite a change in the percentage. In item 18 columns 7 and 18, the total of those two comparisons is about 67 and under adjustment shown for line 20 the relationship becomes about 40 and if we take these costs away from the yard tracks to the higher grade tracks, it would reduce a considerable amount from tracks that would be involved in connection with industrial service or yard service. The terms, first, second, third and fourth at the head of the exhibit on that page is the classification reported by the carriers in their annual reports to the Illinois Commerce Commission. In column two the mileage of the principal line of road; that is, that first constructed as the operating line, but with the expansion of traffic they would build another track along side of it. Some times they have 3 or 4 tracks. (Tr. 129.) There are first main tracks and second main tracks and third and fourth. (Tr. 130.) In item 23 for the Chicago and Western Indiana, we have some going into column 6 [fol. 1470] which is under classification of main line track as they report it. I use one mile main track as compared with 3 miles of yard track because the Sauer-Coverston formula states in making division of maintenance of way expenses of the track at a particular station where a study is made, that you shall take the costs in order to avoid assigning to each track in the yard the same maintenance you would have applied to the higher maintained main line or tracks of that character, so you would take 3 of 1 to be the equivalent of one in the maintenance cost. That is shown at the top of page 170 in the exhibit. I merely use the

Sauer-Coverston formula provision for terminal service in connection with road haul service. (Tr. 130.) Page 19 shows weight of rail in certain of main tracks as reported in the annual report of the Illinois Commerce Commission. This must be considered as two different classes of property because some are of higher class construction and greater investment and more money is required if a heavier rail is used. (Tr. 131.) The data shown is all that could be obtained from the records available to me. Page 20 shows summary for the several switching roads for years 1925 to 1931 inclusive, showing group revenues, operating expenses, operating ratio and net railway operating income for the different roads. All roads shown on page 20 are cost study roads except the Chicago River & Indiana, including the leased property of the Chicago Junction. (Tr. 131.) At the bottom of page 20, there appears the number of cars handled as obtained from annual reports of the Illinois Commerce Commission starting with 1926. 1925 was omitted because of limited time at Springfield in securing the data. In connection with column 2 showing number of cars handled, I state that cars reported for the Baltimore & Ohio Chicago Terminal represent only those applying to freight service though the cost shown for railroad operating expenses includes both freight and passenger service. [fol. 1471] That condition would carry into column 11. The cars handled include both loaded and empty in revenue movement. I have prepared a supplement to page 20 which has been marked by the reporter "Page 20½" and put in the original exhibit. (Tr. 132.) The averages shown on page 20½ of Exhibit No. 120 are derived by dividing the number of cars handled shown for the respective years into railway operating expenses for the respective years 1926 to 1931. (Tr. 132.) This shows using the Baltimore & Ohio Chicago Terminal that the averages are not correct because there is a division of total expenses by number of freight cars only, omitting the passenger cars. The expenses include not only freight cars, but the cost of handling passenger cars as well. The average is shown to complete the statement and to give the result that comes from it. No reason exists for omitting passenger service. I simply left it out when making it. The Exhibit was made at a later date to show the other railroads that the average cost per car on railways using the Chicago Belt was $2.41 as com-

pared with $2.18 for 1931 and $2.31 for the 6 year period. The same condition applies to the Indiana Harbor Belt and to Chicago River and Indiana but for smaller railroads there is a change but not so in the case of the Chicago Short line. The page shows that with a decrease in business that the average cost per car is lower in 1931 and for the 6 years below that of 1926. In 1931, costs do not include further reductions in labor costs made in 1932. (Tr. 133.) Page 21 shows switching revenue and demurrage on different switching roads for the years 1926 to 1931 which shows the relationship between revenue earned from switching and demurrage collected in connection with switching service. (Tr. 133, 134.) The carriers in their car detention cost made no allowance for receipt of demurrage. Some adjustment must be made in respect to that item but I cannot say what it should be. This revenue percentage relationship decrease started with 1926 and continued to 1931.

[fol. 1472] The upper section of page 22 shows miles of track wholly owned and used by cost study switching roads as reported in the tentative valuation by the Interstate Commerce Commission, including the Chicago River & Indiana and Chicago & Western and Indiana. In the central section of the page is shown cost of reproduction new, allowance for land and track structure, etc., for the several roads. The lower section of the page shows average cost per mile for the district. This page shows spread for the different roads as between different classes of property, and that in dealing with costs, including allowance for property investment it is necessary to assign property values to zones in which cars are handled. Nothing has been attempted in that line and until it is, you cannot establish a fair cost basis for operating ratios in cases as complicated as the Chicago Switching District, and produce reliable results. (Tr. 134-135.) Page 23 shows total as to items of value I have considered in building up and showing rate of return from operation. The first section shows investment in road and equipment on the books as of December 31, 1930, and is the date of primary valuation. These dates change somewhat, but most are in 1918 and 1919 and show net change in the property since the Commission appraised it, up to 1930. The second group shows ratio of cost of reproduction less depreciation, the cost of reproduction new at the date of valuation, separately, for

the physical property and the physical property including land. This shows that item 3 is a gross sum undepreciated. Applying the Commission's depreciation rate to additions shown in column 3, we have the amounts shown in columns 6 and 7. If these are applied they would bring a further reduction in value and reductions in base values and increase the rate of return. (Tr. 135-136.) The Commission after its examination deducted from or added to the cost [fol. 1473] of investment in road and equipment. These amounts are not large for any of the railroads except the part of Chicago and Western Indiana shown in column 12. The Commission made a definite readjustment there of $6,500,000.00. Items 10, 11 and 12 are the valuations by the commission of property used as of date of the primary valuation separately for land and right of way and for physical property. Items 13 and 14 show cost after deducting depreciation, excluding land and including land and final valuation as reported as of date of valuation by Commission. Some of these figures are taken from final valuation reports. (Tr. 136.) At the time of the original hearing herein, it was my understanding that there were no final valuation reports. (Tr. 136.) The lower portion of the page sets forth balance recorded on the books as of the date of basic valuation, December 31, 1930, and December 31, 1931, for the cash, and the same for material and supplies. Item 24 shows investment in road and equipment as of December 31, 1931.

These values are subject to readjustment as stated in the valuation reports. The prices are those of 1910 to 1914 average for physical property and date of valuation for land. They will be brought down to their proper status when the report is brought to a later dating. (Tr. 137.) In its valuation cases for recapture purpose, the commission has given weight to the price trend. We must do the same as to additions and betterments since the date of valuation up to present time. Some of those costs were incurred when the index was much higher than now or in 1926 when this case was first considered as to cost ascertainment. (Tr. 137.)

[fol. 1474] The difference between investment in road and equipment as shown on carriers' books and as to appraised values found by the commission must have consideration as to the date of basic valuation. (Tr. 137.) There is a

substantial difference for some of the larger switching roads, but it was not the policy in the accounting reports, known as appendix 2, of the tentative valuation, to make readjustments where definite sums were not definitely ascertainable, but there is some influence that leaves a difference between the book value and the Commission's appraisement of the Baltimore & Ohio Chicago Terminal of $64,000, the Indiana Harbor Belt, $4,982 and the Chicago River & Indiana and the Chicago Junction, $4,000,000.00 and for Chicago and Illinois Western $1,163,000. I have nothing for the Chicago Short Line, a small road, but for Chicago, West Pullman and Southern, the appraisal exceeds the investment by about $55,000.00; for the Illinois Northern, $236,000 and for Pullman Railroad, about $69,000. The net effect of these excesses and deficiences is about $16,000,000.00. If they don't represent value, that must be deducted from the books that were considered later for the purpose of establishing a rate of return. (Tr. 138.) Page 24 shows rate of return based on net railway operating income for 7 year period ending December 31, 1931, for year 1931, based on value as of that date. (Tr. 138.) Ordinarily, we could not take value to a closing date and the 1931 should be an average between December 31, 1930 and December 31, 1931, but on the investment showing the rate of return for the different roads shown in items 10 and 11 separated as a group for the 9 railroads and comparing it as a rate basis shows yield of 6.26% for the 7 year average and 4.48% for the year 1931, both of which being subject to readjustment to the extent of that $15,000,000.00 referred to as difference between investment account and reproduction cost which would be something more than 10%. (Tr. 139.).

[fol. 1475] It would increase item 10 from 6.26 to something over 7 per cent, and items 16 and 15 to show a return rate on the Commission's value brought down to date. Proceeding from Mr. Oliver's Ex. 13, as of December 31, 1926, and adding net changes in road and equipment, there has been no depreciation for changes since 1926, nor was there any depreciation in Mr. Oliver's exhibit for property that was added since the date of the basic valuation. (Tr. 139.) The rate of return for individual roads is shown and for the seven years is 7.89 per cent, and for the year 1931, 5.66 per cent. These readjustments would have a tendency to increase both of the rates of return.

Item 17 shows railroads' investment in road and equipment on basis of return on Commission's valuation brought to date. Using the Baltimore & Ohio Chicago Terminal as an example, we have in column 2, 78.42 per cent; to reach 100 would require adding 21.58 per cent for a trend of values, and so on across the page. The spread indicates all differences between amounts shown and 100 per cent. As to the Belt Railway, it would be 32 per cent; Chicago & Illinois Western, 33 per cent; Chicago River and Indiana, 10 per cent; as to other roads where valuations are in excess of book values, the percentage would be increased.

With the rate of return on property I deal with clerical cost and car detention cost and switching cost for the 26,166 so-called study cars for September, 1926. If the base total for September, 1926, on 42,666 cars was used, the total would be changed from $466,698 to $760,962, or an increase of 61.33 per cent to 100 per cent. If the costs are further expanded by an operating ratio of 70 per cent, referred to in the report, the total would become $1,087,088, and adding taxes and interest, $32,612. Expanded by 12 to [fol. 1476] place taxes and interest on the basis of a year, we would have $3,913,512, which capitalized at 6 per cent would account for property value of $65,000,000, and expanding that to take care of the total switching services we would have a figure of about $652,000,000 as property value item and tax item for the Chicago switching district. (Tr. 141.) These figures are merely approximations, but it shows the results of expansion of a 70 per cent ratio. Mr. Vivian shows in Ex. 101 an estimated switching revenue loss because of failure to increase state rates, of $1,017,000, which if added to average net railway operating income shown on page 24 for 7 years would produce better than ten and one-quarter million dollars, which would increase the rate of return to the recapture class on the average, but I have not made any adjustments in my figures for the proposed increase in revenue. (Tr. 141.)

Page 25 shows freight train car miles for the 9 trunk line study roads, used as a basis for computing average cost per car day on which to predicate car detention. This shows a variation in car miles and in cost of car repairs. They do not necessarily go side by side, but using four years they indicate that while average car mileage decrease was about 2 per cent, that car repair cost for 1926,

compared with the average, decreased about $10,000,000, or about 7 per cent, as shown on page 26. A fair average requires more than one year's figures because of ordinary fluctuations and heavy charges coming in different years on account of freight-hauling cars. A further consideration is that in August, 1925, the Commission changed its accounting rule regarding major labor division of investment in road and equipment, which had the effect of putting into operating expense with that year a cost that previously went in part to investment account. (Tr. 142.)

[fol. 1477] On page 28 is shown data with reference to serviceable car days, with average number of cars owned and leased by roads, whose cost and service per car days entered into the determination of the 64 cents per day, and it shows the same computations producing number of serviceable car days and based on 365 days in the year. These appear as item 3. The next two items are number of cars owned at close of 1925 and 1926, and the average. The lower portion of the page sets forth computations to show the spread in labor cost, including depreciation for the different lines. In noting these variations the relation of cars that were used in the Chicago switching district, represented by those of ownership by companies shown at page 28, would be important. Quite a spread for depreciation as between the several roads for the year 1926 appears. The lowest is about 9 per cent for the Burlington and the highest is 25.8 per cent for the Yazoo & Mississippi Valley. Referring to Mr. Oliver's proposal to readjust car detention cost to take care of amounts contributable to use and non-use, the showing in Ex. 97 indicates there was an average of about 16.8 miles per car for one-, two- and three-lines, and to double that would make about 33.6 miles. Using serviceable car days shown on pages 25 and 28 of my exhibit, we have about 33 car miles per day. (Tr. 143-144.)

Ex. 13, page 45, shows car detention for one line based on 6.6 to 7½ days; three lines, 8.7 days, and the average being somewhere around 8 days. Dividing 33.6 miles by cars in 8 days we find the run about 4 miles a day, but dealing with serviceable car days for the year and car miles for the year, we consider that those serviceable car days include all time in terminals or under day, and if we made some allowance for miles and the time at terminal service,

there would be quite a change that would be increased beyond 33. (Tr. 144.) In my judgment carriers should have [fol. 1478] considered a readjustment of this car detention, because we know there is a certain cost connected with car repairs directly connected with use, that do not wear out when standing still, unless stolen or something like that. Brake shoes and wheels do not wear unless they are in use. There are many expense items related to service as distinguished from time. (Tr. 144.) When it comes to the use study made in 1915 by the engineers of the American Railway Association, which is prior to the date of the cost study, as to Chicago switching district and not related to it, it should be taken into account that the car repair cost, the basis of the 64 cents per day charge, that basis is not related to Chicago switching district service, but is as to the service all over the United States so far as these cars moving by those companies are concerned. If we get a fair basis of cost per day we should use all costs of railway lines and get a car basis for it, and we would then escape this endless situation as to conflict between the different railroads. (Tr. 145.)

Examiner Wilbur: By page 20½ of your Ex. 120 did you intend to indicate the cost on which revenues or rates should be based?

A. No, sir.

Q. You did not?

A. No, I am introducing that exhibit and the explanation in connection with it to show that claims made in these proceedings that the costs now are more than they were in 1926 on the study, would cause higher rates. We are dealing with these roads and dealing with the average movement of cars, and we don't have a showing on the higher costs of the car, and what it would be dealing with all of the individual items, I have no idea. The study was based at a time when the Belt was $2.41, using the 1931 cost. The [fol. 1479] tendency is downward and the seven-year policy is downward.

Mr. Walter: We shall contend that the average of all cars moved, their cost of every kind, was $2,458 for the seven-year period, and that the minimum revenue of $18.00 per car is absurd.

Examiner Wilbur: Mr. Fletcher said he did not intend the figures to indicate any such thing.

The Witness (continuing): I do not qualify as a person who has made any actual ascertainment of switching service costs or as to main line movements, because I claim that is not possible, but under some formulas it may be possible to make it. Some of the investigations with which I was connected involved line-haul movements. I made no statement as to how cost of service on a particular commodity applies in switching as against road-haul movement, because I have no figures. (Tr. 147.) There might be one showing under one condition and another showing under another condition as to switching service itself or as to road-haul service, depending on the volume of traffic and operating conditions. My criticisms set forth in Ex. 120 differ from the criticisms made by shippers in their exceptions to the examiners' proposed report. Mr. Oliver approached his objections from the standpoint of charges against the industrial service by basing it on $10.00 per hour. I am not using that basis. I go to the formula that produced the higher cost and point out why it would naturally come out. Having come into this case after the issuance of the examiners' proposed report, the criticisms as expressed in Mr. Walter's brief express my thoughts generally along the same line. (Tr. 148.) But I am making practically the same criticism in other cases as to divisions between the Oregon Lines and the Minnesota Transfer, which I approached from the same standpoint because I [fol. 1480] think I am right, and I prepared the same explanation for Mr. Walter, approaching it from the standpoint of the criticism of the formula, which had never been studied by me before coming into the case; but after studying the report of switching at Little Rock I concluded there was not much difference between my point of view and that of the report, which gives me the opinion that this cost study needs some revamping. (Tr. 149.)

Examiner Faul: As a result of your examination of these cost figures, what conclusion have you reached as to the level of the present rates, both interstate and intrastate?

A. I have not come to any definite conclusion as to overcharge; I say that nobody will ever know what the level of the rates is going to be if you are going to make it solely on cost. Give consideration to all of these exceptions and put this cost study on a good footing. Not being a rate man I could not give an opinion as to the level of a rate, but what

I say is, that no one knows the costs from one-line, two-line and three-line hauls and cannot know until they study the conditions that the traffic moves under. The figures given reflect a different cost in a two-line than in a one-line, but I say these figures are not proof of that until you make the adjustments that are necessary; you can't know where you are coming out until you check the figures; taking the figures at their face without applying the exceptions, there is an apparent reason for the difference in the rates. I have no definite sum to apply. I say I don't know whether $10.00 per hour is right, whether high or low. (Tr. 150.) I don't know what it consists of, but if the $10.00 has in it a return for property use, then I would say that Mr. Oliver's $10.00 is too low. In car detention cost there should be a separation between use and non-use, but I cannot say what [fol. 1481] would be a fair amount. I have not had much contact with the making of this record. It is a large task. It was closed to me, though I asked access to it so that I might clear up points, realizing in the time I had I would not be able to go very far. A cost study of this type is a rather large-sized order. From the study made considering the adjustments that should be made, whether or not there should be a different rate for single-line or three- or two-line hauls, I would not express an opinion until the figures were returned. (Tr. 151.)

Cross-examination.

By Mr. Davis:

I have made in my adjustments no separation for state or interstate, and cannot make any statement at all as to whether those rates should be the same. My only opinion is that the costs as compiled by the carriers and as they were developed are too high, both as to state and interstate, as they are all mixed together and cannot be separated. I say you cannot correct the cost study; it has to be rebuilt and reframed. Before the proposed report came out in this case I was the Burlington auditor of miscellaneous accounts, but was not the auditor working with the committee to produce results. I worked with the committee whenever I could, but had nothing to do with the policy of this case, which was handled by the committee of which I was not a member. I have had nothing whatever to do with the consideration of these differences. (Tr. 152.)

I left out the Milwaukee C. M. division on page 1 of Ex. 120, as well as the Burlington item other than genera' yard cost, because amounts were not there and my only purpose was to make a grouping, not for the determination of a sum of money. I had no special reason to leave out the [fol. 1482] C. M. Milwaukee division on page 1 except in the first four pages, there were a lot of items to be dealt with and in other cases I just lumped everything I got from the report. There was nothing done in the way of a selection for any ulterior purpose. I am not finding any sum overcharged or undercharged. It was left out on page 1 for the reasons stated and put in in other instances just because of work involved. There was no reason leaving out index 223 on page 5 except going through your reports and comparing your accounts, my plan was to cut all costs that would account for this difference of 9.2 per cent. (Tr. 153.) I thought I had gotten everything in until this statement was shown, and then I found there was an item of $112.00 that related to account 227 that was sandwiched in the operating costs, and I was not going to rewrite the statement for that purpose. There was no reason for leaving out any costs. I wanted to get them all.

The great variations in the maintenance expense of the different roads referred to on page 16 of my Exhibit would not entirely disappear if I made a cost study on my theory and had all the time I desired. It would be a coincidence, after such study, if the maintenance expense or any other expense shown would be the same. It would vary no matter who made it, but the closer you get in refinements to the use of an average, the more comparable and the more strength your results have. As to engine-hour costs I did not arrive at a definite figure under my criticisms of their use as an average throughout the district. I merely gave effect to the things I have mentioned as criticisms of the formula. (Tr. 154.)

An agreed engine-hour cost of $15.00 in handling 15 cars per hour produces $1.00 per car cost. If the engine cost was reduced to $10.00 and they handled 7½ cars per hour instead of 15, the cost per car would be higher than when it cost $15.00 an hour and they handled 15 cars. (Tr. 155.)

[fol. 1483] In showing, on page 20 of the exhibit, Belt Railway net railway operating income of $1,998,797, I did not leave out of that item the joint facility account of

rents and income because it was a debit, nor would it have been my reason for leaving it in. When we deal with net railway operating income we have to consider the joint facility rent and equipment rent under the rule of the Interstate Commerce Commission. Under that rule joint facility rents are where there is joint use of property, and the Commission's plan of valuation is to leave the property out and credit whatever one gets from somebody else, and it is necessary to follow that plan throughout or else take and pick out a property value on things of that kind. In leaving out the joint facilities account of the Belt Railway, showing a debit, in failing to show the credit account for this road for the years 1930 and 1931, I will say I overlooked them in the credit item. Mr. Oliver made some adjustment, because there was an entry in the Belt Railway's account that he took exception to, which was identified in the record; when it came to the closing years I neglected to get that information, which was only procurable from Springfield, and when I got back I proceeded to deal with the amounts shown. I don't know what the adjustment was, debit or credit, and don't know why it was made. If the joint facility account shows a credit it should have been credited, and if a debit it should be subtracted, that is, if it is for the same thing. In this connection I may say for 1930 I don't think I made any allowance for any increased rates in switching. I merely took what was on the books, and if I am going to make any adjustments I would have to increase the revenue some more. These figures were taken from the annual reports of the carriers, but there were certain adjustments on account of increased revenues [fol. 1484] that Mr. Oliver made in the proposed rates. (Tr. 157.) I copied the annual report figures and that is all that this is, and if there are any errors in the figures I will be glad to correct them. (Tr. 158.)

Examiner Faul: I would like to ask, Mr. Walter, whether you will have any shippers testify in this case.

Mr. Walter: In 1961?

Examiner Faul: Yes.

Mr. Walter: No.

Examiner Faul: The record is so far conspicuous in its absence of shipper testimony.

Mr. Walter: Of course we are not making a case here except to sustain the rates. We have not gone out to find anybody to testify against us. (Tr. 158.)

Examiner Faul: I am simply calling your attention to the wording of the order. (Tr. 159.)

Recross-examination.

By Mr. Davis:

Referring to either the Baltimore & Ohio Railroad or the Belt Railway Company on page 20 of Ex. 120, column 2 or column 3, showing railway operating expense, I cannot say that expense is after the amount tenant lines running over the Belt or the Baltimore & Ohio has been subtracted from the total operating expense, as I do not know what is in there; that is the figure I got from the annual report. I do not remember a note in the annual report showing that to be the fact. At the bottom of the page, showing the number of cars handled, includes whatever is in the report to the Commission. The report calls for the number of cars handled at cost for tenant companies, loaded and empty separate; that is as much as I know about what is in there. (Tr. 160.) The report does not separate them. [fol. 1485] I do not know about the items shown for the Belt or the Baltimore & Ohio Chicago Terminal. The details of those items I do not know, as I merely copied them from the annual report to the Commission.

I show for 1931 on Baltimore & Ohio Chicago Terminal, 2,959,671 cars, but I do not know that the reports show 428,644 cars handled by that road, or that 2,531,027 cars were handled by tenant companies, as shown by the report. (Tr. 161.) If the report so shows I did not notice that. I did not examine the reports because I did not have time to do that. The same principle you referred to would apply wherever it is proper. (Tr. 162.) In compiling page 20 of Ex. 120 the item of costs there shown are the amounts shown in railway operating expenses, which exclude taxes. Generally in a cost study, items for overhead and return on investment are not included. It does include all the operating expense, and that is all it is intended to cover.

Mr. Davis: Now, that is all of my cross examination in regard to that portion of this witness' testimony and his

exhibit that will be transferred to Docket No. 24950. (Tr. 162.)

The hearing adjourned until May 11, 1932, at 9:30 o'clock A. M. (Tr. 163.)

At Chicago, Illinois, on May 11, 1932, at 9:30 A. M., the hearing reconvened pursuant to adjournment.

ROBERT I. PIERCE, called as a witness for complainants, was duly sworn and testified as follows:

Direct examination.

By Mr. Walter:

Am secretary and traffic manager of the Manufacturers Association of Chicago Heights, and testified in the previ- [fol. 1486] ous hearings in Docket No. 19610 at the May and September, 1928, hearings in the switching case. The statement I have prepared and introduce does not deal primarily with rates between Chicago Heights and the Chicago district, but is intended to apply in connection with rates within the district as well. (Tr. 164.) The statement is a comparison of per car revenue at the minimum weight of 60,000 pounds on interstate switching rates in the Chicago district of 3 cents for one-line, 3½ cents for two-line, and 4 cents for three or more lines-switching movements, with revenue per car on both interstate and Illinois intrastate single and joint line road haul rates from and to Chicago and a few other points, marked Ex. 3. (Said exhibit received in evidence and marked "Comp. Ex. No. 3, Witness Pierce.") (Tr. 165.) This exhibit is similar to Ex. 76 which I submitted at the September, 1928, hearing in the switching case, and the reference thereon, Docket No. 19610, may be stricken from the cover of the sheet. (Tr. 165.)

The exhibit includes only such road-haul rates where minimum carload weight would produce a car revenue of $24.00 and under. (Tr. 165.) As a result of increased interstate switching rates in the district, including Chicago Heights, the joint line road-haul interstate traffic to and from Chicago has been increased from a minimum of $19.00

to $24.00 per car. (Galligan's Tariff I. C. C. 182, Illinois Commerce Commission No. 81.) The minimum charge on single-line Illinois intrastate traffic is $15.00 per car, and single-line minimum charge on interstate traffic is $18.00 per car. Some corrections should be made on this exhibit. Page 2, line 3 from the top, reference mark circle 2, should be added after reference mark circle 1 on the line showing rate on scrap paper from Chicago to Joliet. Authority for this rate should be changed to read "Item 624-A, Sup- [fol. 1487] plement 13 to Galligan's I. C. C. 176." On line 4 showing rate on slag from Chicago to Joliet, the authority should be Item 710-A, Supplement 13 to Galligan's I. C. C. 176. The rate shown there will apply both on interstate and intrastate traffic. (Tr. 166.) Line 7, rail fastenings Chicago to Joliet, reference mark circle 2, should be added. On page 3, line 8, agricultural implements, Elgin to Chicago; line 9, arsenic, Chicago to Mendota; line 10, barrels, Elgin to Chicago, should all be eliminated from the exhibit because the rates are cancelled. Line 11, blue vitriol, Chicago To Elgin; line 12, carboys, Beloit to Chicago; line 13, grindstones, Chicago to Elgin; line 14, castings, Elgin to Chicago; lines 15 and 16, junk, Elgin and Mendota to Chicago; and line 18, machinery, Chicago to Elgin, should be eliminated, as these rates have been cancelled since the exhibit was compiled.

Page 6, lines 13 and 14, canned goods, Eola to Chicago and Chicago to Eola, the tariff authority should be changed to read, "Item 680-A, Supplement 8, to Chicago, Burlington & Quincy Tariff I. C. C. 17679."

On page 7, line 13, the word "spent" should be inserted after the word "lye." Line 15, paint, Aurora to Chicago, reference mark circle 1, should be added, and on line 16, paper, Aurora to Chicago, reference mark circle 2 should be added. (Tr. 167.)

On page 8, line 1, copper and brass, the word "scrap" should be added, and on line 8, containers, Chicago to Waukesha, Wisconsin, the miles should read 113 instead of 24. With these corrections and eliminations the exhibit contains 179 rates, applying on 82 different commodities, between 63 different origins and destinations, counting the origins and destinations only once, regardless of the number of different rates applying from and to those points. It contains 114 rates where road haul revenue is less than

[fol. 1488] $24.00 per car, 65 rates where it is $24.00 per car, and 54 where road haul revenue is less than $19.00 per car. Reference mark circle 1 indicates the application of rates between points shown, and reference mark circle 2 indicates the rates apply only on Illinois intrastate traffic. The exhibit shows only basing points and not points taking basing point rates or those intermediate. Where more than one commodity was named in the same item and taking the same rates from or to the same points, I have taken the rate only on one of the commodities named in the item. (Tr. 168.) The rates in the exhibit apply both for single and joint line road hauls, and except as indicated by circle 2, the rates apply on interstate movements to and from points in the Chicago district. (Tr. 168.)

Galligan's Tariff I. C. C. 175, naming local and joint rates on various commodities between Chicago and Aurora and points taking the same rates, applies to and from points on the Baltimore & Ohio Chicago Terminal, Belt Railway, the Chicago & Alton Railroad, Chicago & Eastern Illinois, Chicago and Illinois Western, Chicago & Western Indiana, the Chicago, Burlington & Quincy, the Chicago Junction, the Chicago, Milwaukee & St. Paul, Elgin, Joliet & Eastern, Illinois Northern, Indiana Harbor Belt, and Manufacturers Junction Railway in the Chicago district. These rates apply via all road-haul carriers from and to Aurora. They apply interstate from and to points in Indiana to the Chicago district and Aurora, unless restricted on Illinois intrastate movements as shown by reference mark circle 2. Generally the other tariffs shown in the exhibit, both agency and individual line issues, have similar application to that of Galligan's I. C. C. 175. (Tr. 169.)

The exhibit shows that as to revenue per car, the line of the Chicago switching district would extend to any point [fol. 1489] shown where revenue per car on joint line interstate road-haul traffic is $24.00 or less and on single-line interstate road-haul traffic where the revenue per car is $18.00 or less. The exhibits shows line-haul revenues which do not exceed $18.00 per car on single lines and $24.00 per car on joint line road hauls, from points as far distant from Chicago as Peoria, Bloomington, Aurora, Mil-

waukee and other points. As a general proposition the road-haul carrier will absorb the originating and destination switching charge down to $12.50 to $19.00 per car for the road-haul minimum. There are 35 rates in the exhibit producing a per car revenue of $15.00 for the road-haul movement, and 51 where road-haul per car revenue is $18.00 or less. The minimum one-line interstate switching charge in the district is $18.00. The minimum two-line, $21.00, and the minimum three-line is $24.00 per car. (Tr. 170.)

Vivian's Exhibit 99 in Docket No. 19,610 shows average car haul on Illinois intra-state traffic in the Chicago district during September, 1926, as 7.46 miles for one line, 15.77 miles for two lines and 22.7 miles for three lines. From Chicago to Aurora, 37 miles, to Joliet, 28 miles, to St. Charles, 36 miles and to De Kalb, 88 miles. The exhibit shows many road haul rates where the revenue per car would be $15.00 on single line Illinois Intra-state traffic and $18.00 per single line inter-state traffic. (Tr. 170.) Average per car revenue one line Illinois intra-state district traffic for September, 1926, was $11.18, for 2 lines, $19.38 and for 3 lines, $23.88. Average car loading for miscellaneous commodities reported by American Railway Association for years 1923 to 1927 inclusive for the Eastern District as 46,200 pounds for 1926. (Tr. 171.) Exhibit 7, Witness Saur, in Docket No. 19,610, shows average loading miscellaneous commodities for 1,712 one line hauls [fol. 1490] moving in the district in September, 1926, as 87,537 pounds per car. A rate of 5¢ which the Exhibit shows applicable to any miscellaneous commodities for road haul movement would produce a revenue per car on an average loading of 46,200 pounds of $23.10. A 3¢ rate for an average loading of 87,537 in the district, would produce $26.26 car revenue and at the 2½¢ Illinois intra-state rate, $21.88 per car revenue. A comparison of two and three line hauls in the district will show similar results. Quoting from Exhibit 11-A, page 62 and page 88, and Exhibit 11-B, page 9 and page 31, in Docket No. 19,610, the average two line haul distance between Chicago Heights and Chicago District, is 31.66 miles; shortest hauls 7.7 miles, longest haul 36.8 miles. (Tr. 172-173.) Three line hauls Chicago Heights to Chicago district average 33.42 miles; shortest hauls 6.13 miles; longest hauls 64.37 miles.

Chicago district average two line haul 21.32 miles; shortest haul 1.1 miles, longest haul 68.2 miles. Chicago district average 3 line hauls 26.53 miles shortest haul 3.4 miles; longest haul 89.54 miles. (Tr. 173.) In switching in the district, distances in excess of the average, do not make much difference. In the Chicago Heights study, carriers compared that with the average study of the entire district and when one point is taken for comparison with the entire district as to distance, that one point will show higher than the average for the entire group. (Tr. 174.)

Cross-examination.

By Mr. Davis:

The commodities followed by the circle reference 2, apply to state traffic only. There is no commodity rate on stoves from Aurora to Chicago inter-state. The rates followed by circle reference 2 apply only on Illinois intra-state traffic. The rates shown intra-state are joint line rates because they apply from points on lines within the district [fol. 1491] other than the road haul carriers. (Tr. 175.) Via the Burlington from Chicago to Aurora, would be a single line haul but the rates also apply from points on the Baltimore & Ohio Chicago Terminal, which would make a joint line, being more than one line involved. (Tr. 176.) On a movement originating in Chicago on the Chicago, Burlington & Quincy, and moving to Aurora, it would be a single line haul, but the shipment might originate on some other line in the district. A shipment from Chicago to Aurora, via the Burlington, after leaving Chicago, would be a single line so far as the road haul movement is concerned. There might be more than one line road haul after shipment leaves Chicago, taking Bloomington and Peoria as illustrations. In checking the Tariff, you will find they can move over more than one line outside of the Chicago District. The individual lines carry in their tariffs, a minimum car revenue ranging from $12.50 to $19.00 per car before they will absorb switching. (Tr. 177.) It may exceed $19.00. As I recall, the Chicago & Eastern Illinois absorbs down to $12.50 for the road haul movement. That is their minimum for their road haul movement for any point within the Chicago District, and applies to all commodities. (Tr. 178-179.) The Illinois intra-state minimum

reverse is $15.00 single line, 2 line $19.00. Interstate one line minimum $18.00 per car, 2 line $21.00 and 3 line $24.00. (Tr. 180.) These are the minimum car revenues for road hauls. The $15.00 per car minimum on Illinois intra-state traffic is for the road haul movement to the district. (Tr. 180.) Take the first item on the exhibit, tin cans, from Chicago to Aurora, via the Burlington, the revenue per car is $15.00 based on the minimum. If that shipment originates on the Burlington in Chicago and is handled by it to Aurora, it will get $15.00 per car for that movement with no absorption in the district on that. On the mini- [fol. 1492] mum in the district for single line hauls therein on Illinois state traffic, the revenue is $15.00 per car; but as between 2 industries on the Burlington in Chicago alone, it is $15.00 intra-state. (Tr. 182.) On a movement via the Burlington involving its $19.50 minimum before it would absorb switching, if the car originated on some connection in Illinois, delivered to the Burlington for delivery at Aurora, it would not absorb switching if it did not receive $19.50 for its road haul movement. (Tr. 183.) In the case mentioned, if the Burlington got only its minimum revenue of $19.50 for road haul movement, then the switching charge in the district would be in addition to the $19.50. (Tr. 184.) My belief is that shipments from Chicago Heights to the district move through Indiana as well as in Illinois direct. (Tr. 185.) Leaving out the emergency increases, the rates between Chicago and the district intra-state, are 2½¢ for single line hauls and 3¢ joint. From Chicago Heights through Indiana to the district, the rates would be those prescribed by the commission in Docket No. 19,610, of 3¢, 3½¢ and 4¢ respectively. (Tr. 186.) The tariff referred to in my exhibit #3 covers switching facilities both at point of origin and destination and item No. 1, tin cans, the revenue per car of $15.00 covers terminal facilities at Chicago and Aurora. (Tr. 186.) The rates we propose are 2½¢ for one line and 3¢ for 2 line and 3½¢ for 3, or more, lines, minimum 60,000 pounds on the commodities moving between Chicago Heights and the district. And I favor the preservation of the Lowrey basis all over the district shown intra-state and inter-state. I do not favor the same rates, state and inter-state, if the rates get too high. Assuming rates are reasonable for the entire territory, I would favor the same

basis for state and inter-state movements. Most of the commodities moving from Chicago Heights loaded in excess of the 60,000 pounds minimum. All industries at Chi- [fol. 1493] cago Heights, except one are located on the Chicago Heights Terminal Transfer Railroad. It is a short switching line about 2 miles long. (Tr. 187-188.)

Galligan's Tariff, I. C. C., No. 175 applying between Chicago and Aurora, shows the Baltimore & Ohio Chicago Terminal, the Belt Railway, etc., as participating carriers and on that basis, the minimum per car revenue would not be that provided in Galligan's tariff, of $19.00 per car for a 2 line haul. It would be the minimum shown on my Exhibit 3, for a 2 line haul that is less than $19.00 per car. The specific tariff published as against the Lowrey general tariff would be the applicable one. (Tr. 189.) It would apply to the Indiana side if the line operating through Indiana was shown as a participating carrier. Some of the tariffs publish rates as applicable between points which means that they apply in either direction. In my examples, I believe there is but one rate referred to which applies in one direction only. I do not know of actual movement under the rates published. (Tr. 190.) I would not be satisfied with the rates and minimums shown in my exhibit. The rates shown in my exhibit are for line haul movements. On page 8 of my exhibit, showing rate of 6½¢ per 100, minimum 30,000 pounds, Chicago to Berwyn, is published as a line haul rate. I have never understood that Berwyn was within the Chicago Switching District. (Tr. 191-192.)

S. L. Felton, called in behalf of the complainants, was sworn and testified as follows:

Direct examination.

By Mr. Walter:

I am traffic manager of the Acme Steel Company and have been since 1928. The Acme Steel Company manufactures steel articles at two plants within the Chicago Switching District, and a rolling mill business at Riverdale, (134th [fol. 1494] & Wentworth Ave.,) Illinois, is served by the Pennsylvania and the Illinois Central railroads, and another at Archer & Farrell streets, which is a finishing plant,

served by the Santa Fe and the Illinois Central railroads. (Tr. 193-194.) Strip steel at the Riverdale plant is forwarded to the Archer Avenue plant in switching service and after processing there, is reshipped about 50% in car load quantities and the rest in less than car loads. From Riverdale to Archer Avenue is a single line via the Illinois Central, and 966 cars moved in 1928, of total weight, 34,102 net tons. In 1931, there were 625 cars of total weight 22,607 net tons. We haven't the figures showing movement for 1927 and hence we use 1928. The movement from our plants to all destinations in Chicago Switching District was approximately 20% greater in 1928 than in 1927. The car movement to and from plants of the Acme Steel Co., in September, 1928, were 85 single lines, 62 two line, 11 three line and in September, 1931, 50 single lines, 41 two lines and 5 three lines; in March, 1932, 48 single line and 85 two lines. Between August 4 and 10th, 1928, we had no movements via the Baltimore & Ohio Chicago Terminal or Belt Railway of Chicago and only two via the Chicago, Milwaukee & St. Paul; 3 via Elgin, Joliet & Eastern and 21 via Indiana Harbor Belt. During the year 1928, we moved via the Baltimore & Ohio Chicago Terminal 110 of our cars; via the Belt Line, 128; via Chicago Milwaukee & St. Paul, 112; via Elgin, Joliet & Eastern, 32; and via Indiana Harbor Belt 205; total 687. Weekly average for 1928 via Baltimore & Ohio Terminal 2.2; Belt Railway, 2.56; Chicago, Milwaukee & St. Paul, 2.2; Elgin, Joliet & Eastern, .64; Indiana Harbor Belt, 4. Weekly average January to March, 1932 via Baltimore & Ohio Chicago Terminal, 1.3; via Belt Railway, 1.15; via Chicago Milwaukee & St. Paul, .61; Elgin, Joliet & Eastern, .38; Indiana Harbor Belt, 8.93; [fol. 1495] total 161. Between June 15 and 21, 1928, we had no shipments via the Chicago, Burlington & Quincy and the Chicago & Northwestern, but for the year 1928; we had 6 via the Burlington and 70 via the Northwestern. Between January and March, 1932, weekly average via Burlington .92 and via Northwestern .23, total cars 15. August 4 to 10 inclusive, 1928, via Pennsylvania 20; year 1928, 572, weekly average 1928 11 cars. Weekly average January to March inclusive, 1932, 14.72 cars. October 19 to 25 1928, and for that year, no cars via Rock Island; weekly average January to March, 1932, .02. October 15 to 25, 1928 via Short Line no cars and for the year, 1 car. Weekly

average 1928, .02. Weekly average January to March 1932, nothing; October 19 to 25, 1928, via Chicago West Pullman and Southern, 1 car. Year 1928, 40; weekly average 1928, .77; weekly average January to March, 1932, 1. October 19 to 25, 1928 via Chicago and Illinois Western, no cars; (Tr. 196) for year, 1; weekly average 28.02. Weekly average January to March, 1932, .03. Illinois Central, October 19 to 25, 1928, 27. For year, 1,368; weekly average for year, 23.3; weekly average January to March, 1932, 14.8. Illinois Northern October 19 to 25, 1928, 1. For year, 38; weekly average for year, .73. Weekly average January to March, 1932, .02. Pullman Railway, October 19 to 25, 1928, no cars; for year, 19. Weekly average for year .36. Weekly average January to March, 1932, nothing, Total October 19 to 25, 1928, 29. For year 1928, 1,467. Weekly average 1928 28.2. Weekly average January to March 1932, 2.11. (Tr. 197.) Intrastate inbound and outbound cars January to March, 1928, inclusive, moved 1 line, 250 cars, two line 158, 3 line 18, total 428. The same period 1932, 1 line, 164; 2 line, 102; 3 line 3, total 269. Interstate January to March inclusive, 1928, 1 line 1 car; 2 lines 34 cars; 3 lines 1; total 36. January to March 1932, 1 line 3, 2 lines 112, 3 lines nothing, total 115. (Tr. 197.) The Acme Steel Co., owns and maintains approximately 5½ miles of industry track at its Riverdale plant, including 1 railway track scale. It has a track scale at the Archer Ave., plant, with 60 feet of scale track. Maintenance of these for the 5 year period of 1927 to 1931 cost $27,492.70. If increased interstate switching rates applied to interstate [fol. 1496] traffic, the increased cost to Acme Steel Co., for period January to March, 1932, inclusive, on intra-state movement, would have been for 1 line, $2,549.80, for 2 lines, $2,290.20, for 3 lines, $93.00. The total increase on interstate movements for this same period would be $887.40. (Tr. 198.) Average loading of cars from and to Acme Steel Co., and to and from switching district points from January to March inclusive, 1932, was 40.3 net tons. (Tr. 198.) 20.8% of these shipments loaded 20.8 net tons per car. The steel moving from Riverdale plant to the Archer Avenue plant is 90% of all single line tonnage moving from Riverdale plant into the Chicago Switching District. The Archer Avenue plant was the initial property of the Company but as all material used there must be switched from

Riverdale, the cost of switching service is no small item in carrying on two distinct units. Any transportation cost increases would hasten the discontinuance of the Archer Ave., plant, the dismantling of which has been heretofore seriously contemplated and considered. (Tr. 199.) If that was done, the Pennsylvania and Illinois Central would be lines serving the Riverdale Plant. (Tr. 199.)

Cross-examination.

By Mr. Davis:

The first time I knew the company considered dismantling the Archer Avenue plant was in 1928 when I was asked to prepare switching cost and other handling costs between Archer Ave., and Riverdale. I do not know there will be discontinuance of the Archer plant whether the switching rates will go up or not. I am not on the board and my position is traffic manager. I would not know what took place before I became traffic manager in 1928. (Tr. 200-201.) The single line haul movement from Riverdale to Archer Avenue, via Illinois Central, in 1928 amounted to 966 cars and that figure is included in the number of cars [fol. 1497] moving via the Illinois Central in 1928 included in the list of cars moving via other lines. The difference between the 966 cars and 1,368 cars would be movements to lines other than the Illinois Central in connection with it. (Tr. 202.) The statement means, for instance, that a movement originating on the Illinois Central would go to an industry on one or the other of the roads named and that car would appear in both figures. The total movement of 158 cars in September, 1928, and in September, 1931 96 cars, reflects the falling off of traffic from 1928 to 1931. (Tr. 204.) We ship to points within the district from these plants and we have some interstate shipments. Figures on page 1 of my exhibit showing single line, 2 line and 3 line are both state and interstate shipments. As to average loads, my statement shows approximately 20% of the cars paid excess on account of loading less than 60,000 pounds, but we do not ask any change in the minimum weight if we have a reasonable basis of rates. I consider the present level of rates on state traffic within the district as reasonable with 60,000 pounds, minimum. (Tr. 205.)

H. H. BASCOM was called by complainants and was sworn and testified. (Tr. 205.)

Direct examination.

By Mr. Walter:

Am Assistant Traffic Manager of the Youngstown Sheet & Tube Co., and have been connected with it and its predecessor for about 17 years. It was formerly Steel & Tube Co., of America. We have a plant at Indiana Harbor, Indiana, one at South Chicago, Illinois, and one at Evanston, Illinois. The Indiana Harbor plant is served by the Elgin, Joliet & Eastern Railroad, the Indiana Harbor Belt, and the Belt Railway of Chicago. The South Chicago plant is served by Chicago Short Line Railway. Comparing vol [fol. 1498] ume of traffic in September, 1926 with September, 1931, and March, 1932, we find that for the first period, we shipped from our various plants, 942 cars into the switching district; 639 cars interstate, divided into 44 one line, 589 two line and 6 three line hauls and intra state 303 cars, divided into 58 one line, 149 two line and 96 3 line hauls; in September '31, 325 cars interstate, 6 one line, 317 two line and 2 cars three line; intrastate, 67 cars, 40 one line, 8 two line and 19 three line. In March, 1932, 304 cars divided into 204 interstate, 36 being one line, 167 two line and 1 car three line hauls; and intrastate 100 cars, 19 one line, 9 two line and 72 three line. During 1926, we had under demurrage, 1,130 one line cars, 2,465 two lines and 3,252 three lines; in 1927, 715 one line, 1,559 two line and 2,058 three line. The 5 year average of cars under demurrange from 1925 to 1929 inclusive, shows one line 1,119 cars, two line, 2,441 cars and three line, 3,221 cars. The 5 year average being 6,782 against a total of 6,847 for 1926 and 4,332 for 1927. (Tr. 207.)

In 1928 we performed our plant switching at Evanston and the North Western gave us two switches per day. At present the North Western performs the plant switching and we get one switch per day. At the steel plant at Indiana Harbor in 1928, the Indiana Harbor Belt gave 3 daily switches except Sunday, and twice on Sundays. Since 1930 it has switched twice daily, and since August, 1931, has given no Sunday service. The Elgin, Joliet & Eastern service has remained unchanged, having one delivery per

day and one pull per day except Sunday. At our Indiana Harbor coke plant in 1928 the Indiana Harbor Belt gave 3 daily switches, and this continued until February, 1930. Since then we have 2 daily switches except Sunday, and one on Sunday. (Tr. 208.) At South Chicago in 1928 the Chicago Short Line made daily interchange with the Indiana Harbor Belt, the Belt Railway of Chicago and the [fol. 1499] Elgin, Joliet & Eastern, with the present interchange of every other day with the Indiana Harbor Belt, interchange with the other lines being the same. In the original case empty hauls were charged against switching movements. Since September, 1928, railroads supplying our plants with cars for switching district business should have had very little trouble in picking up equipment at nearby yards on their own tracks, instead of going to connecting lines.

Comparing 1931 and 1932 intrastate cars with 1927 and the average five-year period previously referred to, our investigation shows, 1931 intrastate, one-line, 246 cars; two-line, 486 cars; three-line, 776 cars; total 1,858; 1932, one-line, 224 cars; two-line, 244 cars; three-line, 588 cars; total 1,056 cars; five year average beginning 1927, one-line, 715; two-line, 1,559 cars; three-line, 2,058 cars; total 4,332 cars. (Tr. 209.)

There is very little difference in handling service for delivery to road-haul carriers than service on cars to the switching district. A car from our plant at Indiana Harbor for delivery to the Belt at Clearing, and any other car for delivery to a road-haul carrier at Clearing, would receive substantially the same service between those points. This would be true on shipments from our plant at South Chicago or from Greenwood Boulevard, where the originating lines deliver to road-haul carriers or to connecting lines at some point of interchange. (Tr. 210.) In the original case I said that the movement of coal from the steel plant to the coke plant, and coke from the coke plant to the steel plant, would cause a different method of transportation if the rates on these movements were increased. With no rate change, we have put in a conveyor for handling these movements at even a lower cost than the rates charged by railroads. We have not yet moved heavy tonnage by truck [fol. 1500] between our plants at South Chicago and Indiana Harbor. We can move pig iron from South Chicago

to Indiana Harbor at a rate not in excess of 50 cents per ton, and shipments of this class in September, 1926, were 149 cars, 2-line hauls; and 167 cars two-line hauls in March of this year, practically all pig iron from South Chicago to Indiana Harbor. From 1926 to 1931 inclusive our shipments from South Chicago to Indiana Harbor were, 1926, 2,140 net tons; 1927, 12,710 net tons; 1928, 8,725 net tons; 1929, 23,580 net tons; 1930, 48,344 net tons; 1931, 69,495 net tons; or a total of 164,992 net tons.

The large increase in 1931 is caused by the considerable pig iron movement to Indiana Harbor prior to the increase in the rates. We have not shipped a pound from South Chicago to Indiana Harbor since the increases, and if we do, the traffic will move by water. (Tr. 211.) We maintain and own tracks at our Indiana Harbor plant, and for the five year period 1927 to 1931 inclusive the maintenance cost was $213,078.57. (Tr. 211.) The maintenance cost of our tracks at South Chicago over the same period was $149,206.39. (Tr. 211.) We have two pieces of track at the Evanston plant, and for the same period the maintenance cost was $448.93. The balance of tracks at the Evanston plant are owned and maintained by the Chicago & North Western. Our track mileage and investment therein as of December 31, 1931, is as follows: 35 miles at Indiana Harbor, $711,187.59; 4 miles at South Chicago, $206,175.81; at Evanston, .08 mile, $5,238.20; Total investment, $922,601.60. These are net figures after depreciation.

From the 1926 period to and including 1931 there has been a steady decrease in the loading of our materials. In 1926 we loaded 77.93 per cent of car capacity, with an average load of 82,887 pounds, while in 1931 the percentage dropped to 71.61 with average load of 79,800 pounds. Approximately 80 per cent of current car load orders are on basis of 40,000 minimum instead of 60,000 pounds mini- [fol. 1500a] mum, the former being usual minimum on iron and steel articles from Eastern territory. (Tr. 212.)

Our customers have arranged in some instances for trucking from our plants. There were four movements, each consisting of 6 tons. The customers made their own arrangements for that. (Tr. 213.)

Cross-examination.

By Mr. Davis:

The name of Steel & Tube Company of America was changed to Youngstown Sheet & Tube Company some time in 1927. It owned 3 plants at the time (Tr. 213), and are the only plants the company now owns located within the Chicago district. They have plants at other points. We have plants in Illinois within the district and plants in Indiana within the district. The shipments out of Evanston or South Chicago to points in Illinois, we pay the Illinois state rate. Out of the Indiana Harbor plant to points in Indiana we pay the Indiana state rate. If shipments move either way across the state line we pay interstate rates, which are higher than the state rates. (Tr. 215.)

We have open and use routes that handle shipments from our South Chicago plant to any point within the district on the Illinois side at the Illinois state rates. We have no rail route from Indiana Harbor to any point on the Illinois side of the district that will be wholly within the state. (Tr. 215.) In September, 1931, we had 67 shipments intrastate, and in March, 1932, we had, to the switching district, 304 cars and intrastate 100 cars, but as before stated, we have not moved pig iron interstate and to that extent there would be a falling off of interstate movements. There was an increase in the intrastate movement comparing September, 1931, with March, 1932. (Tr. 217.)

[fol. 1501] By Mr. Davis:

Q. It is a fact, is it not, that you take advantage of the lowest rate you can find in making your shipments?

A. I would probably lose my job if I did not.

The Witness (continuing): We are seeking reasonable [fol. 1502] rates for movement within the switching district, and according to my mind, the present Illinois state [fol. 1503] and present Indiana state rates, with 60,000 pound minimum, are reasonable for both intrastate and interstate movements. (Tr. 218.)

H. G. Legan, called in behalf of complainants, was duly sworn and testified as follows:

Direct examination.

By Mr. Walter:

I am traffic manager of the Morton Salt Company of Chicago, and have been with the company 18 years, which manufactures and sells salt. Its shipping or distributing point in the Chicago district is at Blackhawk and Elston, on the Chicago & North Western Railway. In September, 1926, we shipped 22 cars of salt weighing 706.27 tons. In September, 1931, we shipped 45 cars weighing 1507.97 tons. Comparing the first three months of 1927 with those of 1932, we shipped 81 cars weighing 2436.38 tons in 1927, and in 1932 we shipped 81 cars weighing 2924.73 tons. Our traffic moving to the switching district gets the same switching at our plant as that moving for line hauls. (Tr. 219.)

In 1926 the Illinois Central switched at our plant, at night, with an additional switch in the day if needed. The Chicago & North Western now gives 2 switches per day, one between 9 and 10 in the morning, and the other about 4 p. m. In 1926 and 1927 we were located on the Illinois Central, which owned the industry tracks there, which under our lease we maintained. The Morton Salt Company owns, and pays for maintenance of, tracks at our present location on the Chicago & North Western. (Tr. 219.) Based on 1926 tonnage, if switching charges had been on basis now proposed, we would have paid $8014.20 more in charges in 1928, 1929, 1930 and 1931. For the first 3 months [fol. 1504] of 1932 the amount would have been $584.95. (Tr. 220.)

Cross-examination.

By Mr. Davis:

Our plant is located at Blackhawk and Elston Avenues. We move salt there by rail and water. The majority of that in the summer comes by water, but not in the winter time. We ship a lot by rail in the summer time into the district. That is a certain kind of salt. Our plant is a sort of a warehouse. (Tr. 220.) We bring it here, pack it and put it up for the trade, and ship to all points within the district, wherever we have sales. We ship both to the Indiana side and to the Illinois side of the district. As far as we are concerned, the rates both state and interstate in the

district should be the same, if the rates are reasonable. As far as we are concerned, we can load to the 60,000-pound minimum. (Tr. 221.)

THOMAS E. REILLY, called in behalf of complainants, was sworn and testified as follows:

Direct examination.

By Mr. Walter:

I am in charge of traffic for International Paper Company at Chicago, Illinois, which brings paper from its various mills for storage and subsequent movement to customers in the Chicago switching district. We store at Taylor Street warehouse, Crooks Terminal warehouse, and North Pier Terminal warehouse, and the movement therefrom is to customers in the State of Illinois and within the Chicago switching district. (Tr. 222.)

From the Taylor Street warehouse at the present time the shipments to our customers move via the New York Central, the Belt, or the Indiana Harbor Belt and the Chicago & Alton, a three-line haul for which we pay 3 cents per hundred weight, or $18.00 per car, minimum 60,000 pounds, with average load less than 20 tons. In addition [fol. 1505] to the $18.00 and the regular storage charge, we are assessed a loading charge of 1½ cents per hundred pounds on cars loaded by the railroad company, which considering the material used in preparation for loading, amounts to approximately $8.50 per car. If the higher rates of 3, 3½ and 4 cents prescribed by the Commission apply, it would increase our present charges from $26.50 to $32.50, now handled by truck for $12.00 a car. (Tr. 222-223.)

Moving paper from Crooks Terminal warehouse on the Chicago, Burlington & Quincy to a point on the Chicago & Alton would require a three-line haul, which includes the Belt Railway. The switching rate from this warehouse is $15.00 per car for a minimum of 60,000 pounds, as the warehouse loads and blocks cars free of charge. The trucking charge on this movement is $12.00 per car. The new rates would increase this charge $9.00 per car, with the $12.00 trucking charge still in effect. We use trucking

companies that are partially owned by railroads. (Tr. 224.)

Shipments from North Pier Terminal warehouse on the Chicago & North Western to points on the Pennsylvania Railroad pay $15.00 per car, or 2½ cents per hundred weight, minimum 60,000 pounds. This is really a three-line haul involving the Chicago & North Western, the Belt and the Pennsylvania, but due to the connection of the North Western with the Panhandle, the 2½ cent rate applies. (Tr. 225.) There is some question whether the proposed increase will be from $15.00 to $21.00 per car, or $24.00 per car, depending upon whether or not this is a two-line or three-line movement.

We have a mill in the Chicago district located at 32d Street and Kedzie Avenue, on the Chicago & Illinois Western, but at the present time we do not supply customers [fol. 1506] from that mill, which is closed because of business conditions. In normal times we supply around 50,000 tons a year to industries on the Pennsylvania Railroad. Movement from that plant to customer would be via three lines in connection with the Illinois Northern. Some of the paper from the warehouses moves to our customers by rail. Where all-rail service is cheaper we use it, but where we can get a low truck rate we use that. This is due to the minimum, as it is practically impossible for us to load a car 60,000 pounds, the average being right now about 18 tons. (Tr. 225.) We pay the transportation cost as we sell f. o. b. mill, freight paid. If these increased rates prevail and we begin operation of the mill, we would not use the railroads for shipments.

Cross-examination.

By Mr. Davis:

The size of trucks we use varies according to teaming companies. Some have 17-ton capacity trucks and others a maximum of 9 tons. The minimum truck load varies and I cannot give it. The minimum could not be less than the weight of one paper roll, which weighs from 300 to 2000 pounds. (Tr. 226-227.)

The International Paper Company has about 45 mills in the South, the East and Canada. Newsprint paper rolls weigh from 1800 to 2000 pounds. The diameter of these

rolls varies from 28 to 40 inches, which permit loading 16 rolls to the car. We cannot load flat through the doorways. (Tr. 228.) We can load 25 28-inch-diameter rolls weighing around 1200 pounds each, which vary according to weight of paper; some weighing 32 and others 50 pounds per ream. With the exception of the North Pier all our paper movements within the district would be three lines. From the Pier the North Western used to deliver to the Panhandle, but now they deliver through the Belt; making three lines now. It formerly was a two-line haul. This is because we [fol. 1507] only have certain customers using the paper. (Tr. 229.) We haven't any interest in interstate traffic at all, and I do not know what that rate would be. (Tr. 230.)

The 18-ton average loadings were in standard 36-foot cars. We cannot load the rolls standing on end to the minimum in a 40-foot car. Direct shipment from our mills to Chicago, loading on end to our various customers, have 32 to 35 rolls, which does not give more than 28 tons. We think the present intrastate rates with a 40,000-pound minimum would be satisfactory. I am not interested in interstate rates. If the rate or the minimum is increased to the point that drives business to the trucks there is no advantage to the railroads. (Tr. 231.) We do not seek an interstate rate in this proceeding.

Mr. Davis: As this witness does not make interstate shipments and only interstate rates are involved, I move all his testimony, both direct and cross, be stricken out.

Examiner Faul: We have taken considerable testimony in this case involving both interstate and intrastate rates, and they are so closely interrelated between Docket 19610 and Docket 24950 that we will accept his testimony. (Tr. 232.)

The Witness (continuing): I see no reason for paying for a three-line movement where two lines have direct connection with each other. (Tr. 232.) Where such two-line route exists we think we should pay two-line rates. (Tr. 233.) My sole interest is to secure two-line rates for two-line hauls, or for three-line hauls to secure three-line rates. If carriers are allowed, through varying rates for one-, two- and three-line hauls, to route traffic over as many lines as possible, the shippers would be helpless (Tr. 233), and even though the Commission might say that was right, it would not necessarily make it so. (Tr. 234.)

[fol. 1508] H. C. Brown, called in behalf of complainants, was sworn and testified as follows:

Direct examination.

By Mr. Walter:

I am traffic manager of Illinois Brick Company, LaSalle Street, Chicago, which owns 6 plants within the Chicago switching district and 4 immediately outside. We handle both by truck and by rail within the district. (Tr. 234.) Due to decrease in brick consumption in the Chicago district trucks have been used very much more than under 1926 conditions. This situation cannot be controlled by carriers or by shippers. It is due to building decline in the Chicago district. (Tr. 234.) Except in one downtown section, where trucking is by contract, we own and operate our own trucks, varying in carrying capacity from 7½, 5, 4 and 2 tons down to one-half ton, which since January 1, 1932, we have been obliged, under Illinois law, to equip with pneumatic tires, and this has increased our speed from 9 to 11 miles per hour, and will increase the distance to which we can truck, to a great extent. Under present operations heavy trucks are limited to a maximum speed of 15 miles per hour by automatic control on the trucks.

The price delivery of brick on the job in the Chicago district today is $9.00, compared with $12.00 in 1926, which compares with the prices in Chicago from May, 1917, to May, 1918. On shipments handled by car, we have an average loading charge of 87.5¢ per thousand brick, weighing 2 tons, and 43.75¢ per ton and an unloading charge of 27.5¢ per thousand brick, where it is unloaded to the truck, which makes delivery at the destination of the job. (Tr. 235.) Using trucks direct from yards to jobs, eliminates both of those charges because we have no hand labor at all. On [fol. 1509] shipments, using a typical case of movement to the post office job, we were paying 87.5¢ per thousand brick loading charge and 27.5¢ unloading charge at the down town team track and $1.00 trucking charge from that point to destination and $1.10 per thousand brick under present rate which made total cost of $3.25 per thousand brick or $1.62½ per ton for rail movement. On the same movement from our kiln for a distance under 16 miles, direct to the

job, costs us under present rates, $1.95 per thousand bricks or 97½¢ per ton or 65¢ more per ton by rail, based on present 2½¢ one line hauls. (Tr. 236-237.) Beginning with 1924, and continuing to 1931, we have spent $74,661.50 for the maintenance of our side tracks owned and maintained by us.

Cross-examination.

By Mr. Davis:

In 1926, we moved within the Chicago switching district, 13,721 cars. In 1931, 202 cars, via. rail. (Tr. 237.) In 1926, our total sales in the Chicago district approximated 400,000,000 bricks and approximately 18,000,000 within the district in 1931. (Tr. 237-238.) The volume of brick in 1926 and 1931 were moved before the higher interstate rates became effective within the district with exception of the period from December 10 to January 1st. (Tr. 238.) In that period, we shipped 4 cars intra state. (Tr. 239.) The average load is about 20,000 brick to the car, depending on rail yard from which it comes. If from yards furnishing higher capacity cars, then the number of brick increases and is lower where lower capacity cars are furnished. We load cars to 110% of marked capacity. We moved 13,721 cars over our yard tracks in 1926 for shipments to points within the switching district, and 202 cars in 1931, (Tr. 239) 4 of which moved after the higher rates became effective. Our trucking charge for 16 miles at present is 97.5¢ per ton. We own our trucks and our labor costs vary because on piece work based on the number of brick handled [fol. 1510] per day by the trucks. Truck drivers do not load brick. This is done by the electric crane, direct from the kiln. (Tr. 240.) The 97.5¢ per ton cost covers operation of the truck, depreciation, up-keep, repairs and we try to maintain a small margin of profit on investment. There is no charge for loading or for unloading because the truck is dumped automatically. (Tr. 241.) We pay $1.00 from the car to the downtown district. The rates in the downtown district are somewhat higher than direct from our yards, due to congestion in this district. The $1.10 referred to was the freight rate, being 50¢ per ton, plus 10%. The 87½¢ loading charge was from yard to car and is not charged in the 97½¢ per ton figure because we do not use

it. Cars at the yard are loaded by hand labor which we do not have when trucks are loaded. The 27½¢ was for hand labor unloading from car to truck, which we do not have with direct truck movement. We pay truckmen so much per thousand brick with a minimum and that is to the man who drives the truck, with a guarantee of $35.00 per week minimum. Our depreciation charge is 6%. (Tr. 242.) In 1926 our truck operations were under contract but due to the depression, the contractors could not operate and we took over their entire fleet of trucks which we now operate ourselves. This happened in the early part of last year and, based on the price we paid, we figure depreciation at 6%. (Tr. 243.) Our contracts with the truckers called for so much per thousand bricks within certain territories. Due to the depression in business, the teaming companies owning the trucks threw up their contracts. With plenty of building in Chicago, they could make money, but when that dropped, probably 3,000%, I would say they did not have enough business to operate their trucks and we assumed the liability. Under the contract, the basis per thousand brick was $1.25 for the first two miles and that in-
[fol. 1511] creased to $2.35 for 15 miles. They did not quit because of these rates but rather because of the small volume of business offered. They made an enormous amount of money when business was good, but reducing that to one trip a day, as against 6 or 7 trips for the same truck under 1926 conditions made the difference between profit and loss. (Tr. 244.) We use self dumping trucks when we move shipments from car to job as well as from yard to the job. We pay for the gas for the trucks which is included in our costs but cannot state now the allowance for gas but will give you the detailed figures covering the 97½¢ per ton cost. (Tr. 245.)

Redirect examination.

By Mr. Walter:

If we had acquired and were operating new trucks, we could not use a 6% depreciation charge but based on their purchase price, we figure at this rate, we could depreciate them to the full amount in a period of about 10 years. The shipment by rail of the 202 cars in 1931 was probably due to two conditions involving car loading. We have a certain

amount of cars we load every day, to take care of country business. If country business is not developed, then we switch those cars to the downtown business to prevent demurrage accruing. We ship both state and interstate within the district. Our volume in thousands in 1931 was 4[illegible] of the 1926 volume, but our truck shipments were only 1[illegible]. 4 lbs. is the average weight per brick. (Tr. 246-247.)

E. L. Mayo, called by intervenors, was duly sworn and testified as follows:

Direct examination.

By Mr. Cardy:

Am connected with the Moulding Brownell Corporation and testified at the present hearing in Docket 19,610. The company maintains and operates stone quarries, sand and gravel plants and brick plants in the general building material business. (Tr. 247.) The stone quarries are located at [fol. 1512] Thornton and McCook, Illinois. We have 23 distributing yards in the Chicago District, located in all sections of Chicago. In the distribution, sale and transportation of crushed stone, sand and gravel in the Chicago switching district, there has been in the past two or three years a change in the condition with reference to the distribution and sale of crushed stone, sand and gravel in the Chicago Switching District both as to business conditions in the building industry and especially as to sand, gravel and crushed stone, the movements of which have shifted from rail shipments to truck deliveries and boat deliveries. (Tr. 248.) 7 of our 23 yards are dock yards located at South Chicago and on the North and South branches of the Chicago river. (Tr. 248.) Illustrating this change of movement, we have a contract for mineral aggregates on the Post Office job and on the Field job, the former at Van Buren & Canal Sts., running South adjacent to the Chicago, Burlington & Quincy, and Pennsylvania railroads, and stone for that job was trucked from our McCook quarry to yard one at 26th & Illinois Sts. The McCook quarry is on the Western rim of the district and 13 miles from that yard. Up to the first of April this year, we have already trucked

20,000 tons for that job or approximately 400 car loads. (Tr. 249.) After reaching our 26th Street yard, we handled the stone by batch trucks and from there to the Post-Office. The stone crushed was trucked from quarry to the yard and the sand used was brought to the yard by boat. Certain percentages of sand and stone are mixed with a certain percentage of cement which is called a batch operation and that moved by truck from our retail yard to the Post Office, which I referred to as batch trucking. (Tr. 250.) From the quarry to the retail yard, the truck movement was in straight lots of crushed stone. The trucks returning from the yard to the quarry are loaded with sand, which has reached the yard by boat, which gives loaded [fol. 1513] movement in each direction. (Tr. 250.) In moving, we pay 44c per ton for hired trucks transporting stone from the quarry to the yard. We own 80 trucks and we use contract trucks. The Post Office job started about the middle of September last year, since the last hearing in this proceeding. The Field job is at Adams & La Salle Sts., known as the Field Building. (Tr. 251.) We have delivered to date, between 5,000 and 10,000 tons of gravel on that job, trucked from 26th & Illinois St., yard and *and* part of it from Goose Island yard. In normal times, we probably would move that by rail from one of our pits. I mean by normal times the peak of business operations two or three years ago. At the time of the last hearing, there was a steady movement of 5 to 20 cars per day by rail from the quarry to the yard located at 95th & Eggleston Sts., on the Chicago & Eastern Illinois Railroad, but this movement was from Thornton. The movement from Thornton is now handled by truck, not to that yard, but to a yard at South Chicago and there is very little rail movement from the quarry to the retail yard today, although in 1928 and prior thereto, there was a very substantial rail movement. The difference in movement is attributable to the falling off in business and the high freight rates. (Tr. 253.)

Our maximum truck haul in the district made with our trucks is between 16 and 17 miles though there may be longer distances. We use all types of trucks, with varying capacities, from hydraulic dump trucks with maximum capacity of from 5 to 6 yards to small trucks with stationary bodies as small as 1 ton and then we have trailer trucks of 26 yards or 32 tons. We use trailer trucks in the district.

(Tr. 254.) Our maximum hauls from quarries to points outside of the district for one particular job is about 37 miles. Whether stone shall be trucked or moved by rail is generally determined by the sales department. Before [fol. 1514] quoting on a job, I give them the freight rates and then the operating department determines what the trucking cost will be and the job is handled in the way that is cheapest. (Tr. 255.) I am in charge of the traffic department of our company and quote the freight rates to the different departments. We have movements from our quarries in the Chicago Switching District to points in Indiana, most of which move by truck. (Tr. 255.) My company and the producers represented by me would prefer to ship our products to points in Indiana by rail instead of truck if the rail rates would permit. (Tr. 256.) The facilities at our quarries for loading trucks are the same as those used in loading cars. Each is loaded in the same manner and from the same chutes. (Tr. 256.) Taking transportation conditions and competitive conditions into account, my judgment is that a fair rate that would actually move the stone, sand and gravel traffic between points within the Chicago district would now be, for crushed stone, $15.00 per car, for one line; $20.00 per car for two line; and $25.00 per car for three line, believing that our suggestion at the former hearing for a rate of $20.00 for one line; $25.00 for two ling and $30.00 for three line is now too high. The rates now suggested, I do not think would affect any other commodities and as I speak for all Chicago Stone producers, we have practically no competition as far as rail movements within the district is concerned. (Tr. 257.) Up to a few years ago, there was a very substantial movement of stone on the Baltimore & Ohio Chicago Terminal and the Indiana Harbor Belt, and because of this substantial movement, they had a somewhat lower level of rates for one and two line hauls than some of the other roads, but those rates applied to all of the stone carrying lines enter- [fol. 1515] ing the Chicago District. We have what is termed dealer business, that is, we sold and shipped to dealers, via rail, building materials, that is, stone within the district, which is practically fallen off, as very little of that business moves today. Most of the dealers are getting to the quarries and picking up the stone and delivering direct to the jobs. Outside of the two jobs in Chicago that I have

mentioned, and the grade separation at 16th & Canal Sts., there has been no other large jobs in building construction since 1928, that I know of. (Tr. 259.) In carriers Exhibit 110, Docket 19,610, the car shown as moved from station 31 to station 32, was loaded with ground stone which is crushed stone and ground to a very fine degree and used in connection with asphalt work and is not the ordinary crushed stone or sand gravel we discussed this morning. (Tr. 260.) The carriers ordinarily know in advance about large movements of stone such as the construction of the post office building and they certainly do after the job is let. They solicit such business quite intensively. (Tr. 261.) We have moved 20,000 tons to the post office job so far, and as the construction period will cover two years, I do not know what the total volume of business will be. The rail carriers solicited that business (Tr. 261), but made no rate that would move the business in competition with the trucks.

Cross-examination.

By Mr. Davis:

The crushed stone and sand used at the post office job in the concrete work were mixed in our yard at 26th and Eleanor Street and thence trucked to the post office job. The ingredients in the mixture were weighed at the yards and then mixed; and there is no difference in that operation, in that delivery subsequent to the arrival of the materials at the yard as to whether they arrive there either by rail or by truck. (Tr. 262.) The contractor on the build- [fol. 1546] ing could have used the individual carloads of the different ingredients that go into the mixture at the job. (Tr. 263.) The cars of crushed stone and sand for the post office job could have been placed on the West Chicago, Burlington & Quincy track which was available for the job, though at the present time the track is used in suburban service. It is a stub track there and ends under the viaduct at about Polk Street, and would hold roughly somewhere between 20 and 25 cars. (Tr. 263.) It is used now as a storage track for the suburban trains, but there is more than this one track under the viaduct where the suburban trains are being stored during the day. I do not know that the post office people or those in charge of

the building made effort to get the use of those trucks and that they could not. There has been no change since 1916 on the local crushed stone rate via the Baltimore & Ohio Chicago Terminal except the additional emergency charge, which will expire March 31, 1933. (Tr. 264.) The Molding Brownell Corporation is a merger of a number of companies, effective January 1, 1931, and the 80 trucks now owned by it were originally owned by the individual companies, with the exception of trailer trucks, which have been purchased since January 1, 1931. The emergency rates became effective about January 11, 1932. The trucking mentioned has been going on for a year or more. (Tr. 265.)

I recognize there should be a difference in the rates for single-line, two line and three- or more line hauls, and a difference between two-line and three-line hauls. In Docket 19610 we show our loading around 56 tons per car, and on the $15.00 single line haul would equal about 1.3 cents per hundred pounds. (Tr. 266.) The $20.00 per car based upon that loading would equal 1.8 cents, and on the $25.00 per car would be about 2.2 cents per hundred pounds, and [fol. 1517] we feel we should have these per car rates on stone, and do not ask that rates be established in the measure of cents per ton, but in dollars and cents per car. We can load cars around 75 to 80 tons in 140,000 capacity car. With stone it easily loads beyond marked capacity, which is our general practice to so load. (Tr. 267.) As a general practice we do not load in excess of 10 or 15 per cent above marked capacity. Without tariff restriction as to amount of load, if the rates are on a car basis, there would be the restriction that the consignee might designate a shipment in less quantities and we would have to be governed by his requirements. We have many shipments from the quarry to our own distributing yards, and on those shipments there would be no restriction on the amount that could be put onto the car. (Tr. 268.)

We are interested in the interstate rates from our quarries to the Indiana portion of the Chicago district, or to any other point requiring an interstate haul. Ordinarily state and interstate rates for the same haul should be on the same basis, but I can see where state rates might be a little lower basis than interstate ones. With reference to the adjustment in the Chicago district, and speaking only for the stone traffic and its preponderance of that business

in the Chicago district, and having in mind, as previously testified, that 83 per cent of our business is in Illinois, I would say that intrastate rate might be lower than the interstate rate. (Tr. 269.) To the extent that there are more stone carrying lines serving Illinois points than there are serving Indiana points, we get a different service on interstate shipments than we get on intrastate shipments. The state hauls are much shorter than interstate, and Indiana points of consumption are more removed from Illinois quarries than the state points of consumption, and to raise the intrastate rates to the present basis of interstate rates [fol. 1518] in the district would require us to pay an increase on 83 per cent of district business. The average haul on state business is about half of the interstate haul. (Tr. 270.) Our maximum average haul, local, is 13.64 miles. (Tr. 271.)

In the rates I proposed I did not make any distinction between state and interstate movements. We would be satisfied to receive that per car rate on both state and interstate business. (Tr. 272.) If we do not get the car rates suggested for the various hauls, but a different rate, I am not recommending that we be given different rates for state application than for interstate application on stone within the district. (Tr. 273.)

The closest railroad track to the Field job is about half a mile, but we do not have a yard right at that point. A shipment direct from our quarry for use in the Field Building, moving by rail to the rail yard, would be about ¾ of a mile from the Field Building, the Illinois Central at Randolph Street, and all materials shipped in by rail for use in the Field Building would have to be trucked from some railroad yard. (Tr. 275.) Coming over the Illinois Central would be a one-line haul from one of our quarries within the district in Illinois. From McCook the movement would not be via the Illinois Central. We would handle that from our yard at 26th and Eleanor by rail; but stone originating at McCook coming into the Field Building, we would use either the Baltimore & Ohio Chicago Terminal and Alton, or the Indiana Harbor Belt and Alton, which would make a two line haul in both cases (Tr. 276), and the trucking from the railroads to the Field Building in those instances would be greater over the Illinois Central. The Baltimore & Ohio Chicago Terminal reaches

Harrison Street and its track is available to trucks, but they handle perishable products there. But handling over the Illinois Central at Randolph Street would not be the [fol. 1519] proper way because you would have to haul the material across the loop, would have all stoplights and traffic to contend with, so it would not be an economical operation, and the same thing would apply from Harrison Street or from the Alton delivery. We would have the stoplights if we trucked all the way, but coming from the west end of the loop it is better than coming from the east end. (Tr. 278.)

The rates of $15.00, $20.00 and $25.00 per car suggested would be a little lower than the proposed zone rates for Zones 1, 2 and 3 suggested at prior hearings. But there is no relationship and never has been any relationship between Zones 1, 2 and 3 and the rates within the Chicago district, and the zone basis has been passed on a couple of times by the Commission. I am a zone shipper myself, having plants in Zones 1, 2, 3 and 4, as well as being located in the Chicago district.

Redirect examination.

By Mr. Cardy:

For the post office job the trucking from the quarry to the retail yard for 13½ miles would ordinarily move by rail, but it moved by truck. (Tr. 279-280.) At the Field Building, if we had no trucks, shipments could be handled through Baltimore & Ohio Chicago Terminal at 12th Street and then moved from there. In this instance we could get downtown by rail, but I do not know how we could get it from the team tracks to the job. (Tr. 280.) The material for the Field Building reached our retail yard before trucking to the Field Building. The sand and gravel used on the Field job came from two dockyards, reaching there by boat. Whether stone or gravel originating at one of our quarries, it would move first to our retail yards and then would move by truck to the Field Building; and had it been stone, instead of gravel, would have moved the same way to the Field Building as the business was handled to the post [fol. 1520] office, and the carriers would have lost the rail movement from the quarry to the retail yard.

The minimum loading of cars is covered by Rule 86, M. C. B. Rules. (Tr. 281 282.)

Recross-examination.

By Mr. Behrle:

If the fine aggregate for the Field Building and the post office job had moved to our 26th and Eleanor Street yard the cheapest rail rate would be from Joliet or Lockport via the Alton, and if the bill of lading read "Sand" it would be 65 cents per ton plus the emergency charge, but into our Goose Island yard we would have no rail movement at all. The fact that we could move sand by boat to our yards at Eleanor and Loomis Street, and Goose Island, which furnished a return loading of trucks to McCook, did not altogether determine the delivery point of this material. (Tr. 283.) But it did have quite a bearing, although we could have handled sand to the Chicago & North Western team track from one of our own pits rather than bring it in by boat. We could have handled the Field job from team tracks because it was in straight loads and not a batch job. (Tr. 284.) We load sand or stone in a car placed on a team track ordinarily with a crane. The west track of the Chicago, Burlington & Quincy under the viaduct I have mentioned would not have permitted the operation of the crane under Canal Street to unload the cars (Tr. 284), but it was a possible delivery point. We could not have used a crane to unload there, but on a movement to those tracks we would have shipped the material in hopper cars and conveyed them to the upper level, and we considered that in servicing the post office job. (Tr. 285.)

We found as to the post office job that we could do it by batching it at our 26th and Eleanor Street yard and trucking to the postoffice, rather than shipping it in by rail and [fol. 1521] conveying the materials on to the street level and there batching it, at present rail rates. (Tr. 286.)

O. P. Chamberlain, called as a witness by intervenors, was duly sworn and testified as follows:

Direct examination.

By Mr. Cardy:

I am connected with Dolese & Shepard Company, a producer and wholesaler of crushed stone, operating a quarry

at McCook, Illinois, on the Chicago & Illinois Western Railroad. Have been connected with the company since 1904, during the greater part of the time looking after the Chicago & Illinois Western Railroad and have also been an employe of the stone company. At present am the president of the Dolese & Shepard Company. (Tr. 287 288.) The Chicago & Illinois Western is a railroad extending from a point near Willow Springs to a connection with the Panhandle near Campbell Avenue; have been with the railroad since 1904. After an investigation by the Commission some years ago it was classified as a class "B" trunk line, but its principal business is switching. My connection with the company was from 1904 until 1924, at which time I was its president and had been since 1920. (Tr. 288.) The Dolese & Shepard Company has no rail connection other than Chicago & Illinois Western, now operated by the Illinois Central Railroad, and the Dolese & Shepard Company has no connection with its operation. I was present during former hearings of this proceeding. There have been many substantial changes in the transportation, sale and distribution of crushed stone in the Chicago district since that hearing. (Tr. 289.) At the time of the institution of these proceedings the stone price was about 80 cents per ton at the quarry. That has dropped, due in part more to keen competition and in part to much [fol. 1522] smaller demand, and the 1931 average price was about 52 cents per ton. In our production we have made every effort to keep expenses down to meet conditions, and everything has come down except railroad transportation cost. That has not been lowered and in some cases has been raised. (Tr. 290.)

There have been differences since the proceedings were instituted in the transportation of stone in the district. In the past three years the tendency has been to handle stone in the Chicago district by truck instead of by rail. We have not encouraged that movement, and it is my judgment, every thing else being equal, that it is much better business for us to load stone on cars for destinations within the district, if possible; but conditions have practically forced us to change our rail loading facilities and to add truck loading facilities to permit delivery by trucks. (Tr. 290.) In 1930 deliveries of stone in the Chicago district by truck were 14.4 per cent of the total. In 1931 truck de-

liveries of stone equaled 18.3 per cent; the first four months of this year truck deliveries to the district were 31.4 per cent of total deliveries. In 1929 my recollection is that truck deliveries were about 10 per cent of the total. (Tr. 291.) We do not operate retail yards in the district. For the past ten years we have been a strictly manufacturing and wholesaling organization. Our situation differs from that of the Molding-Brownell and the Consumers Companies.

Instead of delivering to our own yards our business in the Chicago district is largely deliveries to building material dealers, though not entirely, having delivered some material direct to building contractors for street paving and for road work. We have delivered and still do deliver considerable business to the steel mills. We do very little [fol. 1523] trucking from our quarry. (Tr. 292.) When we need truck delivery we hire the trucks. We have delivered small orders by our own trucks, but most of the business trucked from the quarry is sold f. o. b. trucks at the quarry and the purchaser buying the stone has the option of purchasing f. o. b. quarry or purchasing delivered at some track. We sold stone for the 16th Street grade separation, which was a railroad proposition (Tr. 293) for separating by viaducts the lines entering the Grand Central Station and the 12th Street Station from those entering the Union Station, which were formerly at grade, but in 1930 and 1931 were separated. The work was in charge of the Chicago, Burlington & Quincy Railroad's engineering department. The stone for those viaducts, 56,000 tons, was delivered f. o. b. trucks Dolese & Shepard Company quarry to Material Service Company, a building material corporation. (Tr. 293.) A small portion of this stone was delivered by truck from one of the Consumers Company yards. Our quarry is 12 miles from where the stone was used, and the stone could have been moved by rail via the Chicago & Illinois Western to Clyde Yards and thence Chicago, Burlington & Quincy to the job. The job was particularly adapted to rail movement because many railroad tracks with plenty of room for construction work and delivery of the stone. The steel was all delivered by rail, it being a concrete steel job. (Tr. 294.) Based on my knowledge and experience and including the railroad business, in my judgment, if this job had been done in

1927 or 1928, this material would have been moved by rail. (Tr. 294.) It was cheaper to handle this business by truck; if handled by rail it would have required delivery into receiving yard at the job and there distributed by truck. The combined cost of rail, plus trucking charge, exceeds the direct trucking cost from quarry to job. (Tr. 295.) Based upon my railroad experience and knowledge of the stone business, my opinion is that a rate from the quarry to the [fol. 1524] switching district of $20.00 per car might have given that business to the railroads for that particular job. (Tr. 295.) I cannot estimate what the trucking business from the quarry will be for 1932, though I am satisfied that trucking is increasing, though for March this year, it ran a little higher than April, but for the former month it was 43% of the business from our quarry. We have made shipments from our quarry to points in the switching district in Indiana. Our interstate business for the past 2 or 3 years in addition to shipments to Chicago, has been to points in Southern Michigan, Northern Indiana, including Indiana points in the switching district. Formerly, we did considerable business at Whiting, Indiana. Previous to the increase in the rates in this proceeding, and as late as September, last year, we shipped considerable stone to Whiting, Indiana, however, and East Chicago, but the increase in the Lowrey 50¢ rate for one and two line hauls to 70¢ has caused that business to move by truck, which is now transferred by truck from a quarry nearer to the Indiana line than we are. (Tr. 296-297.) We are shipping stone from our quarry in Illinois to points within Indiana, but not within the switching district. We have not had a carload shipment this year within the switching district. It is our desire to continue to enjoy our market in the switching district in Indiana; and in a general way, considered it a more profitable business proposition to load our stone on cars and move by rail than by truck because the operation is simpler. We have less weighing and it is cheaper to handle at the quarry, but conditions have practically driven us to movement by truck. (Tr. 297.) Based upon the low cost of commodities mentioned and my experience in the railroad, and in the stone business, my opinion is that a fair rate for one, two and three line hauls with minimum 100,000 pounds, or capacity of car, would [fol. 1525] be $15.00 per car for a one line haul, $20.00 for

two lines and $25.00 for 3 lines, and that these rates would bring the business back to the railroads. Originally we suggested $20.00, $25.00 and $30.00 for these respective hauls, but at the present time, those rates would not attract the business. Those views are expressed after very careful consideration and study of the situation. (Tr. 298.) There is a difference in the transportation of stone intra-state and inter-state, within the district. The average interstate haul is considerably greater than intra-state within the district, according to our records. (Tr. 298.) Based upon my railroad experience, car revenues in switching service are generally figured in car lots; not in tons, but in cars for a given amount. We do not figure in tons except on line haul business and it is just and reasonable to apply a per car charge in switching movements. In a general way, the railroads recognize the car rather than the ton as the unit of transportation in switching movements, but I believe that in switching a commodity, rates should be placed on cars and not on tons. This year's business was less than last year's business and last year's business was less than the year before. My attention has not been called to any effort on the part of carriers to get this business back to their rails in the way of offering a rate that would attract it. (Tr. 300.)

Cross-examination.

By Mr. Davis:

If it cost me $1.00 a ton to produce a thing, and I could get but 80¢ for it, I would try to make arrangements to produce it for less than 80¢, otherwise I would not want the business. But if you are speaking about the railroad business with reference to soliciting business which costs more to handle than could be received for it, I would say [fol. 1526] that that cannot be determined, based upon any one movement of the railroad. And as to our own business, with competition the last two years and the manufacturing business generally, we have moved some business at below cost because certain prospective purchasers suggest that we should not make money on stone when they cannot make money on their products. In 1931, approximately 20% of our total business was sold F. O. B., quarry and in the first 4 months of 1932, probably 25%.

Our only operating quarry is at McCook and we have no material yards in the district, though we sell to material yards in the Chicago district, which is sold either F. O. B. quarry or F. O. B. the yard. The price, F. O. B. quarry, is higher per ton or per yard than the price we would quote at quarry, shipped on a delivered price. If the buyer receives it at the quarry, due to fact that we are compelled to load it on trucks which is more expensive than loading on cars, we feel we are entitled to a little more money and can generally get 10¢ or 15¢ more than if delivered by car into the dealer's yard. (Tr. 303.) When I said 56,000 tons of stone were used at the 16th street job, I meant the construction of the concrete and steel viaduct. Ballast is a separate proposition, that is, generally handled by railroad companies and not by the contractor. My recollection is that Mr. Cardy asked me if a rate of 20¢ per ton had been in effect in 1927 for a two line haul and this job had been built at that time, whether that rate would have caused the material to move by rail and I said in my opinion, that it would, I mean $20.00 per car. There has been no change in the rates from McCook to the district since 1916 except the 10%, Ex Parte 103. (Tr. 305.)

Redirect examination.

By Mr. Cardy:

The other question you asked me was for my opinion as to the movement of this material by rail, if the job had [fol. 1527] been constructed in 1927 or 1928 and I said, in my opinion, that it would have moved by rail at that time, even under present rates. (Tr. 306.)

Recross-examination.

By Mr. Davis:

The rate was the same then as it is now with the exception of the 10% increase, but the conditions are entirely different. Stone is selling today for less and everything going into the production and transportation of stone except transportation charges have been lower since that time. The condition of all business, in the former years was on a higher plane; general selling price at least 40% higher than the present, or practically 40%. My testimony as to the

56,000 tons relates to the concrete and steel viaduct. The Baltimore & Ohio Chicago Terminal did not deliver any stone for the viaduct. The cars of stone you refer to as having moved to the different railroads was probably stone they brought in to ballast their tracks after the job had been done. This material they would probably bring in and dump it where they could use it on the track. (Tr. 308.) But the stone used to construct the steel and concrete viaduct did not move by rail. (Tr. 308.)

Redirect examination.

By Mr. Cardy:

There has been some increase in the movement of stone by water to Chicago that has affected the competitive situation. Considerable stone moved by boat as well as gravel competing with stone; that has come from across the lake. Stone by boats has come mostly from Sturgeon Bay and delivered in the Chicago River. The water transportation permitting them to compete very closely with our stone. (Tr. 309.) The stone from Sturgeon Bay has been coming in for about 4 years. We do not operate our own trucks from the quarry. We do not attempt truck deliveries in quarries except by selling to the material dealer and allowing him to truck it or by using hired trucks. We have [fol. 1528] hired as high as 25 trucks at one time to make deliveries ourselves, but they were under our control, which we seek to avoid if we can. Many material dealers have their own trucks and they prefer to use them and that applies to some large road contractors, they prefer to come to the quarry with their own trucks. (Tr. 310.)

Recross-examination.

By Mr. Davis:

I did not testify in the case at the hearing in 1928. Mr. Womer testified and I attended the hearings. (Tr. 310.) In selling fluxing stone to the steel companies, it does make a difference whether the freight rate is 76c or 60c. If the company buying it can secure it at a lower freight rate, it has an effect on its cost. (Tr. 311.) December 9, 1931, fluxing material for the steel corporation was sold F. O. B.

our quarry. I do not know what the freight rate was at that time but when a change was made not in freight rate but in trackage, the steel company forced a reduction in our price F. O. B. quarry, because it had to pay more freight. As stated, our sales to the steel company were F. O. B. quarry, so much per gross ton and as I have stated, the freight rate had a good deal to do with it because the higher the freight rate, the less that company had to pay, if it had a haul at a lower rate. (Tr. 313.) We haven't any freight rates today; we deliver F. O. B. quarry and have always delivered business that way. If we are selling on a delivered basis today, a reduction of 16c in the freight rate from the quarry would be to our advantage, but as I have said, we are not operating on that basis today. We sell F. O. B. the quarry. (Tr. 313.) Our shipments to Indiana points within the district moving by rail were handled for Indiana Harbor delivery. Our deliveries there were to four points and the rate at the time was the Lowrey two line haul at 50c per ton. We would now pay the new two line rate according to the tariff. If you will look, you [fol. 1529] will see that from Chicago & Illinois Western points, most of those points are checked as a two line haul. (Tr. 314.) Whether it is physically three lines and the intermediate carrier is taking cars, perhaps physically in most cases it is a 3 line haul but is checked in as a 2 line haul and is the same now as before the change was made in the tariff. (Tr. 315.)

E. L. MAYNARD recalled by intervenors.

Direct examination.

By Mr. Cardy:

The Molding-Brownell Corporation has been buying sand and gravel and crushed stone for our docks and shipping by boat to our docks since November, 1930. (Tr. 315.) In November, 1930, we shipped to our Goose Island yard 5,000 tons of stone from Sturgeon Bay, Wisconsin, which was the first large movement of the company, though there were other movements by other vessels prior to that time. We have bought considerable sand and gravel shipped by boat from Ferrysburg, Michigan, and some gravel from Lockport, moving by barge on the drainage canal and up the

Chicago River. There is quite a substantial movement of sand from Sarnia, Ontario. I know of one boat operating between Lockport and Chicago, and as to lake boats, five operate in connection with our business, though that is not all that operate to the Chicago district. The five boats are actively engaged in handling sand, gravel and stone for our company, but they handle other business as well. (Tr. 316-317.) The substantial water movements of these commodities has taken place since the last hearing, although there was one trip in our business prior to the advance. (Tr. 317.) I cannot give actual figures as to the amount of tonnage our company handles by boat as against crushed stone originating in the district, but the amount is very [fol. 1530] substantial, however. (Tr. 318.) This water competition has been a serious problem to some of the producers in the district. It has been serious to this extent, that the Elgin, Joliet & Eastern to Gary and South Chicago has eliminated the emergency rate allowed in Ex Parte 103. (Tr. 319.)

H. G. Brown recalled for further cross-examination:

Cross-examination (continued).

By Mr. Davis:

I have the details of truck cost requested by you. In figuring the operation in connection with trucks we made up a budget and we figured that on a per day basis first. We figured depreciation at $2.00 per day per truck; Illinois and city license cost, 50 cents per day (Tr. 324); gasoline, $1.50; oil, 50 cents; repairs, $1.00; tires, 50 cents; driver $9.00 per day; making a total of $15.00 per day. (Tr. 324.) On the haul of 15 or 16 miles mentioned this morning, on which we charge $1.95 per ton, or 97½ cents per thousand, we would handle 4½ tons on those trucks, making $8.77½ per load per trip; two trips, $17.55, three, $25.32, and four trips, $35.10. (Tr. 325.) This calculation is based on 300 working days per year, and we have not allowed for return on investment. These figures are based on cost, including depreciation based on the price we paid for the trucks. (Tr. 326.) We carry insurance on the trucks and that will be included in the overhead. The insurance covers all lia-

bility, including personal injury. The trucks operate out of the Weber plant, and all others, including Northbrook to points in the immediate vicinity of the north section of Chicago.

In setting up our figures we estimated 90 miles per day [fol. 1531] as maximum mileage on the long-haul business. On short haul our minimum mileage at 35 miles, and somewhere between those two would be the average, but that we have not figured. (Tr. 327-328.)

Mr. Walter: That is complainants' case, if your Honors please. (Tr. 328.)

E. S. GUBERNATOR called in behalf of intervenors:

Direct examination:

Am general traffic manager of Lehigh-Portland Cement Company, and am familiar with cement rates in and about Chicago, having had ten years' direct contact with them while located in Chicago and since have kept closely in touch with them. My appearance is for the Lehigh-Portland Cement Company and the Marquette Cement Manufacturing Company, which manufacture and market cement, with plants located at Oglesby, Illinois, in the LaSalle switching district. They compete in their largest market, Chicago, with the Universal Portland Cement Company, located at Buffington. Cement is a low grade commodity sold on a delivered basis, and on sales in the Chicago market they must meet the delivered prices of the Buffington mill. The LaSalle plants are on the Illinois Central, Chicago, Burlington & Quincy, and Chicago, Milwaukee, St. Paul & Pacific, and are served indirectly by Chicago, Rock Island & Pacific and Chicago & North Western (Tr. 329); which afford direct routes to Chicago. Buffington, Indiana, is on the Elgin, Joliet & Eastern, and prior to December 10, 1931, the cement rate therefrom to Chicago was 6½ cents per hundred, with an 8-cent rate from LaSalle. This relationship, subjected to general advances and reductions since 1918, had prevailed for approximately 20 years. Effective December 10, 1931, pursuant to the Commission's decision in [fol. 1532] Docket 19610, the rate from Buffington, Indiana, to points in the Chicago switching district on cement was reduced to 3 cents, 3½ cents, 4 cents and 4½ cents respec-

tively, depending on the number of lines. January 4, 1932, pursuant to Ex Parte 103, the LaSalle rate was increased to 8.8 cents, and by reason thereof the spread between the Oglesby and Buffington rates to Chicago was increased from 1½ cents to 5.8 cents, 5.3 cents and 4.8 cents per hundred respectively, depending upon the number of lines employed from Buffington. (Tr. 330.) In Atlas Portland Cement Company v. Chicago, Burlington & Quincy, 81 I. C. C. 1, the Commission prescribed a mileage scale from Buffington to Illinois destinations, and from other interstate points to Illinois and Indiana destinations, and required the use of the scale on interstate traffic in both Indiana and Illinois, except from Buffington to Chicago and from LaSalle, Oglesby and Dixon, Illinois, to Chicago. From LaSalle to Chicago is 96 miles, and Buffington to Chicago 22 miles; the LaSalle mileage determines rates from Oglesby. This mileage scale produces, from LaSalle to Chicago, 9½ cents, and from Buffington to Chicago 7 cents per hundred weight, with a 2½ cent spread against LaSalle. (Tr. 331.) Chicago is the largest cement consuming market west of New York. Its requirements approximate those of the balance of Illinois. It is LaSalle's principal market. To all other points in the state the relationship is fixed by the Atlas scale; and while prior to the rates effective in Docket 19610, the spread between LaSalle and Buffington rates to Chicago was 1½ cents per hundred, as against 2½ cents under the scale, the spread today against LaSalle is 5.3 cents, 4.8 cents and 4.3 cents per hundred weight respectively, depending upon the number of lines used from Buffington. Cement is packed in cloth bags, 4 constituting 1 barrel weighing 380 pounds. (Tr. 332.) The maximum per barrel spread against [fol. 1533] LaSalle is 20 cents, and minimum 16 cents, compared with spread of 5.7 cents per barrel prior to December 10, 1931. The present spread is excessive and unwarranted by transportation conditions.

We appeared in Docket 19610 but presented no testimony because the investigation involved switching rates only, and the Commission in that case, with respect to the Elgin, Joliet & Eastern rate, said (p. 689): "That carrier is not a party to the Lowry Basis. It publishes only line haul rates, somewhat higher than the Lowry basis." (Tr. 332.)

The rate from Buffington to Chicago was not a switching rate, but a line haul commodity cement rate. Buffington, Indiana, while within the borders of the Chicago district,

was not in a tariff sense in the district. (Tr. 332.) Although the Elgin, Joliet & Eastern had never concurred in the Lowry switching district rates it, after the decision of the Commission in 19610, effective December 10, 1931, cancelled its line haul rates and published all-commodity switching rates prescribed in said docket for switching movements, which reduction was protested by the Marquette Cement Manufacturing Company but suspension was denied by the Commission. (Tr. 333.) Being intrastate shippers, the LaSalle mills cannot prosecute complaint before this Commission, testing the propriety of present relationships, and we appear here to protest against any further reduction in the Buffington-Chicago rate, and it is our position, should the Commission determine that the all-commodity rates prescribed by Docket 19610 are unreasonable, that the findings should exclude cement from Buffington to Chicago.

Mr. Davis: Understanding that the evidence of Mr. Gubernator is offered in Docket 24950, I move that all his testimony be stricken because not germane to the issues in this [fol. 1534] case, as he apparently deals with line haul rates from LaSalle to Chicago as against Buffington to Chicago.

The Witness: We contend it is a line haul rate and should never have been reduced and was not reduced by authority of Docket 19610, and would like to have a ruling, if there is to be one, because it was my purpose to leave Chicago tonight.

Examiner Faul: Docket 19610 was restricted to switching rates, and complaint 24950 is based on rates established as the result of 19610. This testimony may have an indirect bearing on the issues in 24950, but in receiving it we want to make clear that we are not going to open the door wide to the receipt of testimony which will refer to line haul movements. Because it might have an indirect bearing on the issues in 24950 we will receive the testimony. (Tr. 334-335.)

Cross-examination.

By Mr. Davis:

The scale in the Atlas Cement case fixed 9½¢ from the La Salle to Chicago. (Tr. 335.) This scale starts with 6½¢ for 5 miles and for 22 miles, 7¢, the distance from

Buffington to downtown Chicago. I think under the scale, 7½¢ applies for 30 miles. The Atlas case is reported 81 I. C. C., 1, which was docket No. 12,710. (Tr. 336.) The mileage scale applies to the distance calculated over 3 lines and in some cases, 5 lines, but generally it includes delivery at destination subject to all switching absorptions. (Tr. 337.) The distances are measured from station to station, but I do not say subject to the switching limits at every end. Under the scale, rates from Buffington were not measured from the Chicago District, but from Buffington, Indiana. The scale generally, throughout the territory applies station to station, each point having its own district within which switching rates are applied and absorbed. (Tr. 337.) Minimum revenue before absorption of switching charges varies but because a 6½¢ minimum rate is ap- [fol. 1535] plied to 50,000 pounds, makes minimum earnings $32.50. I do not know where minimum earnings before switching absorption run that high. (Tr. 339.)

Mr. Walter: In stating that the complainants rested, I should have said that as to witnesses interested in any particular commodity desiring to present testimony, we would be glad to produce them. We have some witnesses here, particularly from the Shell, Sinclair and Empire Oil Companies, but their testimony would add nothing to what has already been put in.

Mr. Davis: You rest again then, do you?

Mr. Walter: Yes.

Mr. Davis: I renew my motion made at the beginning, going to all witnesses and their evidence regarding anything other than Section 1 be stricken from the record as having no bearing on the issues in this formal complaint as the rates attacked were prescribed by the Commission in Docket No. 19,610 on the record made therein, becoming effective December 10, 1931, and in view of the record as made in the complaint case and my motion to strike the carriers will now rest on the record as made and will not introduce any evidence in the formal complaint. (Tr. 340.)

Examiner Faul: As stated at the outset, we have endeavored to keep these two cases, Section 13 feature in Docket No. 19,610, and this complaint No. 24,950 separate, one from the other and for that reason will now make the same ruling as made at the close of the hearing in Section 13 case, that separate briefs should be filed. (Tr. 341.)

Examiner Faul: This will be a proposed report case and briefs due from all parties July 8, 1932 and as there is nothing further the record in this case is closed at 4:05 o'clock P. M. May 30, 1932. (Tr. 343.)

[fol. 1536] In United States District Court

[Title omitted]

Certificate as to Abstract

State of Illinois,
Cook County, ss:

I hereby certify that I am a regular practicing attorney of Chicago Illinois, duly admitted to practice in the highest court of said state and duly admitted to practice in the District Court of the United States for the Northern District of Illinois; that pursuant to an order of said court, entered as of November 21, 1933, authorizing me to take from the files of said court in the above entitled cause, certain certified copies of the record of the proceedings before the Interstate Commerce Commission filed in the above entitled cause as exhibits and a part of the record therein for the purpose of abstracting, I have made an abstract of the proce-dings set forth in the said certified copies of the record of the proce-dings before the Interstate Commerce Commission in the following entitled causes before said Commission, which were consolidated for the purpose of hearing and heard upon one record to wit:

Docket No. 19610, being a general investigation instituted by the Interstate Commerce Commission on its own motion, entitled Switching Rates in the Chicago Switching District;

Investigation and suspension Docket No. 2900 entitled Switching Rates Between Points in the Chicago and Chicago Heights Districts, and

Docket No. 20006 entitled Illinois Slag & Ballast Co. vs. Chicago West Pullman & Southern Railroad Co., et al., and in addition, I have abstracted the record of the proceeding before the Interstate Commerce Commission as shown by the certified copy thereof and duly filed as an

exhibit and a part of the record in said above entitled cause, in the case of Acme Steel Company, et al., vs. the [fol. 1537] Atchison, Topeka & Santa Fe Railway Co., et al., Docket No. 24950 in which it was stipulated by the parties that the evidence in said proce-ding should be treated as evidence in Docket No. 19610 at the reopened hearing in said cause in so far as the same might be material to the issues in said proceeding and that the record and evidence taken in said reopened hearing in Docket No. 19610 should be treated as evidence in said Docket No. 24950 in so far as the evidence and testimony taken in said Docket 19610 might be material to the issues in Docket No. 24950. That the foregoing pages numbered 1 to 945 inclusive contain a full, true and complete abstract of the record before the Interstate Commerce Commission in said Dockets No. 19610, I. & S. Docket No. 2900, and Docket No. 20006 consolidated and sets forth in narrative form the oral testimony of each and every witness, sworn and examined in said cause, together with all objections to the testimony of said witnesses and the rulings thereon and exceptions thereto and all motions to strike and exclude testimony and requests for the production of testimony, the rulings thereon and exceptions thereto, and also shows all exhibits offered by the respective parties duly identified and received in evidence, together with all objections made to the admission of said exhibits, the rulings thereon and exceptions thereto, and also shows all exhibits offered and excluded with the objections ther-to, the rulings thereon and exceptions thereto; also all concessions, admissions and agreements of counsel as shown in said record; and in compliance with Rule 75 of the Supreme Court of the United States; and that the foregoing pages numbered from 1 to 113 contain a full, true and complete abstract of the record before the Interstate Commerce Commission in said Docket No. 24950, and sets forth in narrative form the oral testimony of each and every witness, sworn and examined in said cause, together with all objections to the testimony of [fols. 1538 & 1539] said witnesses and the rulings thereon and exceptions thereto and all motions and requests for the production of testimony, the rulings thereon and exceptions thereto and also shows all exhibits offered by the respective parties and received in evidence, together with all objections made to the admission of said exhibits, the

rulings thereon and exceptions thereto; also all concessions, admissions and agreements of counsel as shown in said record; and in compliance with rule 75 of the Supreme Court of the United States; except where impossible to properly abstract in narrative form, the gist of certain questions and answers, such questions and answers have been set out verbatim.

In testimony whereof, I have hereunto set my hand this 5th day of January, 1934.

William E. Lamb.

[fol. 1540] In United States District Court, Northern District of Illinois, Eastern Division

In Equity No. 13,507

Illinois Commerce Commission, Public Service Commission (of Indiana), Board of Trade of the City of Chicago, and Acme Steel Company, Plaintiffs,

vs.

United States of America, The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Chicago Terminal Railroad Company, The Baltimore and Ohio Railroad Company, The Belt Railway Company of Chicago, The Chesapeake and Ohio Railway Company, Chicago and Calumet River Railroad Company, Chicago and Eastern Illinois Railway Company (Charles M. Thomson, Trustee), Chicago and Erie Railroad Company, Chicago and Illinois Western Railroad, Chicago and North Western Railway Company, Chicago and Western Indiana Railroad Company, Chicago, Aurora and Elgin Railroad Company (A. A. Sprague and Britton I. Budd, Receivers), Chicago, Burlington and Quincy Railroad Company, Chicago Great Western Railroad Company, Chicago, Indianapolis and Louisville Railway Company, Chicago Junction Railway (The Chicago River and Indiana Railroad Company, Lessee), Chicago, Milwaukee, St. Paul and Pacific Railroad Company, The Chicago River and Indiana Railroad Company, The Chicago, Rock Island and Pacific Railway Company, Chicago Short Line Railway Company, Chicago, South Shore and South Bend Railroad, Chicago,

West Pullman & Southern Railroad Company, Elgin, Joliet and Eastern Railway Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, Illinois Northern Railway, Indiana Harbor Belt Railroad Company, Manufacturers' Junction Railway Company, The Michigan Central Railroad Company (The New York Central Railroad Company, Lessee), Minneapolis, St. Paul & Sault Ste. Marie Railway Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Pere Marquette Railway Company, Pullman Railroad Company, Wabash Railway Company (Walter S. Franklin and Frank C. Nicodemus, Jr., Receivers), defendants

[fol. 1541]

Findings of Fact and Conclusions of Law—Nov. 3, 1933

This cause, having come on to be heard and the parties having appeared by their respective counsel and offered evidence in support of their respective contentions, and the court, having heard the arguments of counsel and being now fully advised in the premises, makes the following

Findings of Fact:

I

Plaintiff, Illinois Commerce Commission, is created by the laws of the State of Illinois and is charged with the duty of administering "An Act Concerning Public Utilities," approved June 29, 1921, as amended, hereinafter referred to as the Illinois Commerce Commission Law. Among other duties, the Illinois Commerce Commission is given general supervision of all public utilities, including railroads engaged in transportation between points within the State of Illinois, and also has the power to investigate existing or proposed interstate rates where any act in relation thereto shall take place within the State of Illinois, and is authorized to apply to the Interstate Commerce Commission by petition or otherwise or to any court of competent jurisdiction for relief.

Plaintiff, the Public Service Commission (of Indiana) is created by Chapter 93 of the Acts of the General As-

sembly of the State of Indiana for the year 1933, approved March 2, 1933, hereinafter referred to as Public Service Commission Act. Among other duties, the Public Service Commission (of Indiana) is given general supervision of all public utilities, including railroads engaged in transportation between points within the State of Indiana, and also has the power to investigate existing or proposed inter- [fol. 1542] state rates, where any act in relation thereto shall take place within the State of Indiana, and is authorized to apply to the Interstate Commerce Commission by petition or otherwise or to any court of competent jurisdiction for relief.

Plaintiff, Board of Trade of the City of Chicago, is a corporation organized and existing under the laws of the State of Illinois, the members of which are engaged in the purchase, manufacture and sale of grain and grain products.

Plaintiff, Acme Steel Company is a corporation organized and existing under the laws of the State of Illinois, engaged in the manufacture of steel articles, and joined in this suit on behalf of itself and fifty-seven other corporations, individuals and associations similarly situated, who were parties complainant in Docket 24950 before the Interstate Commerce Commission and all of whom were parties to the proceeding known as Docket 19610, and also on behalf of such other parties as might have a like interest in the subject matter hereof.

All plaintiffs are citizens of their respective states of incorporation, as above set forth.

II

The Alton Railroad Company; The Belt Railway Company of Chicago, Chicago and Calumet River Railroad Company; Chicago and Eastern Illinois Railway Company (Charles M. Thomson, Trustee in bankruptcy); Chicago & Illinois Western Railroad; Chicago and Western Indiana Railroad Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago Junction Railway (The Chicago River and Indiana Railroad Company, lessee); Chicago, West Pullman & Southern Railroad Company; Illinois Central Railroad Company; Illinois Northern Railway; and Pullman Railroad Company, are corporations organized and existing

under the laws of the State of Illinois, with their respective principal offices and places of business at Chicago, Illinois. [fol. 1543] The Atchison, Topeka and Santa Fe Railway Company is a corporation organized and existing under the laws of the State of Kansas, with principal offices and places of business at Topeka, Kansas, and Chicago, Illinois.

The Baltimore and Ohio Chicago Terminal Railroad Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business at Baltimore, Maryland.

The Baltimore and Ohio Railroad Company is a corporation organized and existing under the laws of the State of Maryland, with its principal operating office at Baltimore, Maryland.

The Chesapeake and Ohio Railway Company is a corporation organized and existing under the laws of the States of Virginia, West Virginia and Kentucky, with its principal office and place of business at Richmond, Virginia.

Chicago and Erie Railroad Company and Chicago, Indianapolis and Louisville Railway Company are corporations organized and existing under the laws of the State of Indiana, with their respective principal offices and places of business at Chicago, Illinois.

Chicago and North Western Railway Company is a corporation organized and existing under the laws of the States of Illinois, Wisconsin and Michigan, with its principal office and place of business at Chicago, Illinois.

Chicago, Aurora and Elgin Railroad Company (A. A. Sprague and Britton I. Budd, receivers), is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business at Aurora, Illinois.

[fol. 1544] Chicago, Milwaukee, St. Paul and Pacific Railroad Company is a corporation organized and existing under the laws of the State of Wisconsin, with its principal office and place of business at Chicago, Illinois.

The Chicago River and Indiana Railroad Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business at New York, New York, and Chicago, Illinois.

The Chicago, Rock Island and Pacific Railway Company is a corporation organized and existing under the laws of

the States of Illinois and Iowa, with its principal office and place of business at Chicago, Illinois.

Chicago Short Line Railway Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business at South Chicago, Illinois.

Chicago, South Shore and South Bend Railroad is a corporation organized and existing under the laws of the State of Indiana with its principal office and place of business at Michigan City, Indiana.

Elgin, Joliet and Eastern Railway Company is a corporation organized and existing under the laws of the States of Indiana and Illinois, with its principal office and place of business at Chicago, Illinois.

Grand Trunk Western Railroad Company is a corporation organized and existing under the laws of the States of Michigan and Indiana, with its principal office and place of business at Detroit, Michigan.

Indiana Harbor Belt Railroad Company is a corporation organized and existing under the laws of the State of Indiana, with its principal office and place of business at New York, New York.

[fol. 1545] Manufacturers' Junction Railway Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business at Cicero, Illinois.

The Michigan Central Railroad Company (The New York Central Railroad Company, lessee) and Pere Marquette Railway Company are corporations organized and existing under the laws of the State of Michigan, with their respective principal offices and places of business at Detroit, Michigan.

Minneapolis, St. Paul & Sault Ste. Marie Railway Company is a corporation organized and existing under the laws of the States of Michigan, Wisconsin and Minnesota, with its principal office and place of business at Minneapolis, Minnesota.

The New York Central Railroad Company is a consolidated corporation organized and existing under the laws of the States of New York, Pennsylvania, Ohio, Indiana, Michigan and Illinois, with its principal office and place of business at Albany, New York, and New York, New York.

The New York, Chicago and St. Louis Railroad Company

is a corporation organized and existing under the laws of the States of New York, Pennsylvania, Ohio, Indiana and Illinois, with its principal office and place of business at Cleveland, Ohio.

The Pennsylvania Railroad Company is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal operating office at Philadelphia, Pa.

Wabash Railway Company is a corporation organized and existing under the laws of the State of Indiana, with its principal operating office at St. Louis, Missouri. Walter. S. Franklin and Frank C. Nicodemus, Jr., are receivers of this property under order of the District Court of the United States for Eastern Distict of Missouri.

[fol. 1546] All of the corporate defendants above named are citizens of the states of their incorporation, owning and operating lines of railroad within the Chicago switching district in the State of Indiana and/or in the State of Illinois, and as such are engaged in the interstate transportation of property subject to the provisions of the Interstate Commerce Act, and are also engaged in the intrastate transportation of property within the State of Indiana and/or within the State of Illinois. The individuals above named are trustees and receivers, operating the lines of railroad under order of the District Courts of the United States and as such are suable under the provisions of the Interstate Commerce Act and related acts.

III

This is a suit brought pursuant to the provisions of Chapter 32 of the Urgent Deficiency Appropriations Act, approved October 22, 1913, to enjoin, set aside, annul, suspend and restrain the enforcement, operation and execution of an order of the Interstate Commerce Commission entered July 3, 1933, in its Docket 19610, Switching Rates in the Chicago Switching District, 195 I. C. C. 89, and to enjoin and restrain the defendants, other than the United States of America, from publishing, demanding, charging, collecting and/or receiving rates alleged to be authorized by the said order of the Interstate Commerce Commission; and to set aside and hold for naught any and all acts of said defendants, or any of them, performed and done under

or in alleged conformity with said order of the Interstate Commerce Commission, dated July 3, 1933.

[fol. 1547] IV

The Interstate Commerce Commission, in May, 1927, instituted a proceeding of inquiry and investigation into and concerning all rates and charges for the switching within the Chicago Switching District of all car load traffic moving in interstate commerce and their relation to like rates and charges for switching in intrastate commerce. The Illinois Commerce Commission and the Public Service Commission (of Indiana) were notified of said investigation and co-operated and sat with the Interstate Commerce Commission at the several hearings had in regard to said investigation, and there were several hearings before the Interstate Commerce Commission, the Illinois Commerce Commission and the Public Service Commission (of Indiana) sitting jointly for the purpose of hearing testimony and receiving evidence on the subject matter of the general investigation, in which proceedings the plaintiffs herein were parties. On July 31, 1931, a report and order of said Interstate Commerce Commission was entered (177 I. C. C. 669), a copy of which report and order is attached to the plaintiffs' bill of complaint and marked "Appendix A".

In said report and order the Interstate Commerce Commission approved, as maximum reasonable rates, the following rates for switching carload freight within the Chicago switching district, minimum weight 60,000 pounds per car; one-line hauls, 3 cents per hundred pounds; two-line hauls, 3.5 cents per hunderd pounds; and three-or-more-line hauls, 4 cents per hundred pounds. Said rates became effective on interstate traffic, except railway equipment on its own wheels, on December 10, 1931. The defendant railroad companies on September 10, 1931, filed with the Interstate Commerce Commission a motion or petition seeking appropriate findings and order authorizing and requiring them, upon the record as made in Docket 19610, to establish the same switching rates to apply intrastate in the [fol. 1548] Chicago switching district within Illinois and Indiana as were found lawful for interstate application in said district. Thereupon the Interstate Commerce Commission denied said petition in so far as it asked the making of such an order upon the record already made, but did

on November 2, 1931, reopen the proceedings in Docket 19610 for further hearing in respect of the relation of the rates and charges for switching in intrastate commerce to the rates prescribed for like switching in interstate commerce, for the purpose of determining whether the adjustment of the interstate and intrastate rates and charges was unduly prejudicial to interstate shippers and traffic and unjustly discriminatory against interstate commerce, in violation of Section 13 of the Interstate Commerce Act, with a view to the entry of such order or orders as might be necessary to correct such violation or violations, as might be found to exist.

On December 28, 1931, complaint was filed by the plaintiff Acme Steel Company, and fifty-seven other individuals, corporations and associations with the Interstate Commerce Commission, attacking the lawfulness of the said increased interstate switching rates which became effective on December 10, 1931, which said complaint was docketed as No. 24950. Thereafter defendant railroad corporations filed a motion to dismiss the said complaint without hearing, which motion was denied.

The said reopened Docket 19610 and the said complaint No. 24950 were assigned for hearing at the same time and place. The two cases were heard separately before examiners, but the said examiners issued a consolidated proposed report.

Thereafter exceptions were filed by the plaintiffs, oral argument was had, and the report and order of the Commission of July 3, 1933, was served on all the parties (195 I. C. C. 789). A copy of said report and order is attached to the plaintiffs' bill of complaint and marked "Exhibit C." (Tr. 1549) Said report and order authorize and require the defendant railroad corporations to establish for intrastate switching in the Chicago switching district within Illinois and within Indiana, the same rates as are contemporaneously applied to interstate switching of carload freight within the Chicago switching district.

VI

Thereafter, on August 15, 1933, the plaintiffs filed with the Interstate Commerce Commission their joint petition for reopening said proceedings in Dockets 19610 and 24950 for further hearing, for setting aside of the order of July 3, 1933, for reargument and or reconsideration of the said report and order of July 3, 1933, a copy of which petition is attached, to the plaintiffs' bill of complaint and marked "Appendix D." Said petition for reopening was denied on October 4, 1933.

Thereafter the defendant carriers filed their joint answer to said petition, dated August 24, 1933, a copy of which answer is attached to the plaintiffs' bill of complaint and marked "Appendix E."

Thereafter the plaintiffs filed their joint petition dated September 9, 1933, with the Interstate Commerce Commission, seeking the suspension of the tariffs of rates and charges purporting to be filed in compliance with the order of July 3, 1933, for the statutory period and for the institution of an investigation into the lawfulness of such proposed rates on intrastate traffic in Illinois and in Indiana within the Chicago switching district, and, in the alternative, for suspension of such tariffs for a period of not less than sixty days to permit careful consideration by the Interstate Commerce Commission of the petition above referred to, and also to permit an orderly consideration by any court of competent jurisdiction to which the validity of [fol. 1550] the order of July 3, 1933, might be submitted for determination, and for appropriate order postponing the effective date of the said order for a like period.

Thereafter, on September 9, 1933, the Interstate Commerce Commission entered its order postponing the effective date of said order for a period of thirty days and until October 20, 1933.

Said petition for suspension of said tariffs was denied on October 4, 1933.

VII

In conformity with said order of July 3, 1933, the defendant railroad carriers filed with the Interstate Commerce Commission their various tariffs, a list of which is attached to plaintiffs' bill of complaint and marked "Appendix I" by which tariffs the tariffs and schedules naming rates for

intrastate switching in Illinois, filed with the Illinois Commerce Commission, were canceled; also tariffs and schedules naming rates for intrastate switching in Indiana, within the Chicago switching district, filed with the Public Service Commission (of Indiana) were canceled, and other tariffs named in said appendix bearing an I. C. C. number were filed with the Interstate Commerce Commission, thereby making effective for intrastate switching in Indiana and for intrastate switching in Illinois, within the Chicago switching district, the same rates as were in effect for switching interstate traffic within the Chicago switching district, viz., 3 cents per hundred pounds for one-line hauls, 3.5 cents per hundred pounds for two-line hauls, and 4 cents per hundred pounds for three-or-more-line hauls, carload minimum 60,000 pounds, with certain exceptions thereinafter set forth.

[fol. 1551]

VIII

A part of the evidence presented to the Interstate Commerce Commission in justification of the measure of what the rates within the Chicago switching district should in the hearing in Docket 19610, prior to the Commission's order of July 31, 1931, consisted of a cost study. Other evidence in addition to the cost study, was offered and received with respect to said switching rates both state and interstate within the Chicago switching district. The protestants in Docket 19610, and related cases, including the plaintiffs herein, offered evidence in opposition to the said cost study.

[fols. 1552 & 1553] And the court holds the following:

Propositions of Law

1. That the Interstate Commerce Commission's denial of plaintiffs' motions of January 28, and February 3, 1932, for a different cost study than that already made by the railroads did not constitute an abuse of discretion or denial of a full hearing.

2. That the order of the Interstate Commerce Commission of July 3, 1933, is supported by sufficient evidence.

3. That the order of the Interstate Commerce Commission of July 3, 1933, contains adequate findings of fact.

4. That the order of the Interstate Commerce Commission of July 3, 1933, is sufficiently definite and certain.

5. That the Interstate Commerce Commission has full power and authority to make its order of July 3, 1933, complained of.

6. That the Interstate Commerce Commission's denial of plaintiffs' petition of August 15, 1933, for reopening for further hearing, for setting aside of the order of July 3, 1933, for reargument and/or reconsideration, did not constitute an abuse of discretion or denial of a full hearing.

7. That the order of the Interstate Commerce Commission of July 3, 1933, complained of herein is a valid and subsisting order of said Commission.

8. That the plaintiffs' bill of complaint herein should be dismissed for want of equity, and that the defendants should recover their costs.

Dated at Chicago, Illinois, this 3rd day of November, 1933.

Albert B. Anderson, Circuit Judge. James H. Wilkerson, District Judge. John P. Barnes, District Judge.

[fols. 1554 & 1555] In United States District Court for the Eastern Division of the Northern District of Illinois

Equity. No. 13507

Illinois Commerce Commission et al., Plaintiffs,

vs.

United States of America et al., Defendants

Order Denying Injunction and Dismissing Bill of Complaint—Nov. 8, 1933

This cause came on to be heard on final hearing and was argued and briefed by counsel for the respective parties, and the Court being fully advised in the premises, and having filed its findings of fact and conclusions of law,

It is, this 8th day of November, 1933, Ordered, Adjudged, and Decreed that the prayer of the bill of complaint be, and the same is hereby denied, and that said bill be dismissed, and that defendants have their costs from plaintiffs.

A. B. Anderson, Circuit Judge. James H. Wilkerson, District Judge. John P. Barnes, District Judge.

[fol. 1556] In United States District Court.

[Title omitted]

Notice of Motion for Stay—Filed Nov. 15, 1933

To Elmer B. Collins, Special Assistant to the Attorney General; H. L. Underwood, Attorney for the Interstate Commerce Commission; and J. N. Davis, Solicitor for defendant carriers:

Please take notice that on Monday, November 13, 1933, at the opening of court, or as soon thereafter as counsel can be heard, in Judge Wilkerson's courtroom in the United States Court House, Chicago, Illinois, the undersigned, as solicitors for plaintiffs herein, will present the attached motion for stay of the order of the Interstate Commerce Commission of July 3, 1933, to the judges constituting the special District Court herein, and ask for the entry of a decree in accordance therewith.

Otto Kerner, Irvin Rooks, Harry R. Booth, Philip Lutz, Jr., Herbert J. Patrick, Herbert J. Campbell, Luther M. Walter, Solicitors for Plaintiffs.

Received a copy of the above notice, this 10th day of November, A. D., 1933, at 4:55 o'clock P. M.

J. N. Davis.

Rec'd copy of above Notice this 13th day of November. Elmer B. Collins, Solicitor for United States. H. L. Underwood, Solicitor for Interstate Com. Com.

[fol. 1557] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR STAY OF THE ORDER OF THE INTERSTATE COMMERCE COMMISSION DATED JULY 3, 1933, PENDING APPEAL TO THE SUPREME COURT—Filed Nov. 15, 1933

Now come plaintiffs herein, by their solicitors, and present this their motion for the entry of an order staying the effective date of the order of the Interstate Commerce Commission dated July 3, 1933, pending appeal to the Supreme Court, and in support thereof show as follows:

1. The rates authorized for intrastate switching in the Chicago switching district in Indiana and in Illinois of 3 cents, 3.5 cents and 4 cents, will become effective on November 20, 1933, unless stayed by an order of this court, and as a result thereof shippers will be compelled to pay an additional minimum amount per car for one-line service of $3.00; for two-line service of $6.00; and for three-or-more-line service of $6.00 per car. Plaintiff, Acme Steel Company, will be subjected to irreparable damage in the amount of such increased rates on many cars of freight switched intrastate in the Chicago switching district in the state of Illinois.

By reason of the interpretation made by the Supreme Court of the United States in the Arizona Grocery case, 284 U. S. 370; 76 L. Ed. 348, of the statute under which the Commission awards reparation, there is grave doubt that plaintiff, Acme Steel Company, and other shippers who, pending the appeal, pay the prescribed rates on intrastate traffic, if the order of the Commission finally should be annulled, will be able to recover back the amounts paid in excess of existing rates.

2. Novel and important questions are involved in the assignment of errors herein.

3. Public interest will not suffer in any manner by reason of the stay, nor will the revenues of the rail carriers be [fol. 1558] adversely affected for the reason that, if the rates become effective, the rail carriers will as the evidence indicates, lose business to other forms of transportation on

which the revenue is important, and may exceed the increase in earnings on such business as is retained by the rail carriers. Investments in necessary facilities such as loading and unloading platforms, vehicles, roadways, etc., will be made by shippers of intrastate traffic in the Chicago switching district, which will still further increase the volume of traffic diverted from rail carriers, and if the order be set aside, such shippers, having already made such investments, will continue to use other forms of transportation, even though the present intrastate rates be restored.

Various of the defendant rail carriers have, subsequent to the filing of the bill herein, filed petitions with the Interstate Commerce Commission seeking modification of the Interstate Commerce Commission's order of July 3, 1933, and relief from the rates approved by the Interstate Commerce Commission for application on intrastate traffic within the Chicago switching district, on the ground that the said rates are prohibitive and will reduce the revenue of the said carriers, to their great loss and damage. It was also alleged that as to the commodities covered by the application there had never been any movement to or from points via an interstate route; that no such routes were available on present traffic and that therefore there could be no discrimination as to persons, places and commodities as between interstate and intrastate commerce.

4. The status quo, viz: 2.5, 2.5 and 3 cent rates on intrastate traffic, has been in effect for many years, the matter has been under investigation by the Interstate Commerce Commission for several years, and as the statute requires expedition in the disposition of the appeal, justice requires that the status quo be maintained for the additional few months necessary for the determination of the case by the Supreme Court of the United States.

5. Plaintiff Acme Steel Company tenders bond for the payment of the increased revenue on such intrastate business as may be switched for it by the defendant railroad [fol. 1559] carriers during the pendency of the appeal, if it should finally be determined that the order of the Interstate Commerce Commission is valid.

Wherefore, plaintiffs respectfully move for the issue of an order staying the enforcement of the order of the Com-

mission of July 3, 1933, pending the appeal herein to the Supreme Court of the United States.

Otto Kerner, Attorney General of Illinois; Irvin Rooks, Harry R. Booth, Assistant Attorneys General of Illinois, Solicitors for Illinois Commerce Commission. Philip Lutz, Jr., Attorney General of Indiana; Herbert J. Patrick, Deputy Attorney General of Indiana, Solicitors for Public Service Commission (of Indiana); Herbert J. Campbell, Solicitor for Board of Trade of the City of Chicago. Luther M. Walter, Solicitor for Acme Steel Company.

[fols. 1560 & 1561] PETITIONERS' EXHIBIT 1

October 25, 1933.

Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C.

Re Switching Rates in the Chicago Switching District, I. C. C. 19610. Petition of Chicago, West Pullman & Southern Railroad Company, Illinois Northern Railway and Illinois Central Railroad Company to Exempt Plant Refuse of no Commercial Value from 13th Section Order

DEAR SIR: I am forwarding herewith two signed originals and eighteen extra copies of the petition in the above entitled matter and request that said petition be filed and submitted to the Commission for consideration and decision.

Copies of said petition and of this letter have been served by mail on all parties to the record.

Yours very truly, Clifford H. Browder, J. T. Quisenberry, Attorneys for Chicago, West Pullman & Southern Railroad Company, Illinois Northern Railway, Illinois Central Railroad Company, 606 South Michigan Avenue, Chicago, Illinois.

[fol. 1562] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket 19,610

Switching Rates in the Chicago Switching District

Petition of Chicago, West Pullman & Southern Railroad Company, Illinois Northern Railway, and Illinois Central Railroad Company for Modification of the Commission's 13th Section Order of July 3, 1933, Herein to Exempt Therefrom the Intrastate Carload Switching Rates on Plant Refuse of no Commercial Value Shipped from Points on the C. W. P. & S. R. R. and on the Illinois Northern Railway to Markham Yards, all Within the Chicago Switching District

Come now the Chicago, West Pullman & Southern Railroad Company, Illinois Northern Railway, and the Illinois Central Railroad Company, respondents in the above entitled proceeding, and respectfully petition the Commission to reopen and reconsider its 13th Section Decision and Order in this case and to exempt therefrom the intrastate carload switching rates on plant refuse of no commercial value shipped from points on the C. W. P. & S. R. R. and on the Illinois Northern Railway to Markham Yard of the [fol. 1563] Illinois Central Railroad within the Chicago Switching District. In support of said petition your applicants respectfully show:

1. The C. W. P. & S. R. R. and the Illinois Northern Railway are switching lines in Chicago, handling freight traffic exclusively. Such roads connect with numerous trunk lines, including the Illinois Central, which also engages in switching business in the Chicago District. All of said railroads are parties respondent in the above case and subject to the several orders of the Commission.

2. Both of said switching lines originate a considerable volume of refuse of no commercial value, which is transported to an undeveloped part of Markham Yard of the I. C. R. R. under the present intrastate all-commodity two-line interterminal switching rate of 2½¢ per 100, minimum 60,000 pounds, or $15 per car. Exact figures are not available on Illinois Northern traffic, but that from the C. W. P. & S. totals 20 to 30 cars weekly, the average loading being 90,000 pounds, while the average gross revenue thereon to

the C. W. P. & S. and the Illinois Central is $22.50 per car, or from $450, to $675 per week under the present rate of 2½¢ per 100. Refuse traffic from the Illinois Northern to the Illinois Central is similar to that from the C. W. P. & S., though somewhat less in volume.
[fol. 1564] No refuse has ever moved to or from points on these switching lines via interstate routes, and no such routes are available on the present traffic.

3. Under its order of July 3, 1933, your Honorable Body directed all switching lines to increase the intrastate all-commodity interterminal rates on one-line, two-line, and three-line traffic from 2½¢, 2½¢ and 3¢ per 100 respectively, to the interstate level of 3¢, 3½¢ and 4¢ per 100 pounds respectively, in order to remove unjust discrimination against interstate commerce found to have been caused by the lower state switching rates. This order directed the carriers to publish the new rates on or before September 20, 1933. On or about August 15th a petition was filed on behalf of the Illinois Commerce Commission and the Public Service Commission of Indiana, et al., for further hearing and for setting aside the order of July 3rd, and for reargument and reconsideration. Pending the disposition of this petition the Commission continued the effective date of its order from September 20, 1933, to October 20th of the same year.

On or about October 5, 1933, injunction proceedings were started in the U. S. District Court for the Northern District of Illinois (Eastern Division) to set aside and annul the Commission's order of July 3, 1933. This case has been argued, and pending decision, the Commission has further [fol. 1565] postponed the effective date of its order from October 20th to November 20, 1933.

4. Should said increased intrastate all-commodity rates become effective, the present two-line rate applicable to refuse handled from points on the C. W. P. & S. and the Illinois Northern to points on the Illinois Central, will be increased from 2½¢ per 100 to 3½¢ per 100, or an increase from $22.50 per car to $31.50 per car, based on the average loading of 90,000 pounds.

The C. W. P. & S. and its industries at Irondale, and the Illinois Northern and its industries adjoin or closely parallel navigable federal waters now used extensively by large

ships and barges. These railroads and plants are also crossed and/or fringed by numerous paved highways, which are not congested. Many industries now move refuse by motor truck and/or barge, and your petitioners believe that if the proposed rates become effective the carriers herein will lose this profitable refuse traffic to competitive forms of transportation. This, of course, should be averted if possible, for traffic once lost is difficult to regain.

5. Transportation conditions are favorable in the refuse traffic herein. The amount and regularity of the tonnage and revenue have already been discussed. The refuse concerned has no commercial value whatsoever and there is no risk to the carriers of loss, damage or delay, and said traffic [fol. 1566] may be handled, so far as the shippers are concerned, entirely at the convenience of the carriers.

6. A petition to exempt plant refuse from the level of interstate switching rates prescribed July 31, 1931 was filed in Docket 24,950 (consolidated with Docket 19,610) and was rejected by the Commission because "only intrastate movements are involved." (195 I. C. C. 89; 105.) No refuse has ever moved to or from points on the C. W. P. & S. and the Illinois Northern Railway via interstate routes, and no such routes are available on the present traffic. Hence there can be no discrimination as to persons, places, and commodities as between interstate and intrastate commerce. For this reason we feel that the Commission probably intended to and should in fact exempt all refuse of no commercial value from its 13th Section Order in Docket 19,610.

7. One of the primary purposes of the above 13th Section Order hearing was to insure that intrastate traffic will contribute its just and fair share to the maintenance of the general transportation system and not constitute a burden upon interstate commerce. If, however, your petitioners are compelled to increase the two-line intrastate rates on plant refuse from 2½¢ (present) to 3½¢ (proposed all-commodity rate) per 100, minimum 60,000 pounds, the above purpose of the 13th Section Order with respect to this particular traffic will be defeated by the loss of the [fol. 1567] traffic and a substantial reduction in the net revenues of the petitioners, and this will increase rather than diminish the burden upon interstate commerce.

8. Under the circumstances, no further hearing with respect to the refuse traffic herein and the rates thereon seems necessary or desirable.

Wherefore, your petitioners pray that your Honorable Body take jurisdiction of the subject matter herein and reopen and reconsider and modify the 13th Section decision and order herein, and exempt therefrom the intrastate carload switching rates on plant refuse of no commercial value shipped from points on the C. W. P. & S. R. R. and on the Illinois Northern Railway to points on the Illinois Central Railroad in such switching district, and that the Commission enter such further order or orders as to it may seem reasonable and just.

Dated at Chicago, Illinois, this 25th day of October, 1933.

Respectfully submitted, Chicago, West Pullman & Southern Railroad Company, by T. J. Maloney, President, 606 South Michigan Avenue, Chicago, Illinois. Illinois Northern Railway, by T. J. Maloney, President, 606 South Michigan Avenue, Chi-
[fol. 1568] cago, Illinois. Illinois Central Railroad, by C. C. Cameron, Vice-President, 12th Street and Michigan Boulevard, Chicago, Illinois. Clifford H. Browder, J. T. Quisenberry, Attorneys for Petitioners, 606 South Michigan Avenue, Chicago, Illinois.

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each other party.

Dated at Chicago, Illinois, this 25th day of October, 1933.

Clifford H. Browder, Attorney for Petitioners.

[fol. 1569] PETITIONERS' EXHIBIT 2

706913

Chicago, Ill., September 26, 1933.

To the Interstate Commerce Commission, Washington, D. C.:

The Chicago Junction Railway (The Chicago River & Indiana Railroad Company, Lessee) by LeRoy Blue, its

General Freight Agent, does hereby respectfully petition the Interstate Commerce Commission, that it be permitted under Section 6 of the Interstate Commerce Act, as amended, to put in force the rates set forth in this petition to become effective one day after the filing thereof with the Interstate Commerce Commission. Your petitioner bases such request upon the following facts which present certain special circumstances and conditions justifying the request herein made:

This commission in its decision in Docket 19610, Switching Rates in Chicago Switching District, 177 I. C. C. 669, found that rates of 3 cents per 100 pounds for 1-line hauls, 3½ cents for 2-line hauls, and 4 cents for 3 or more-line hauls, carload minimum 60,000 pounds, within the Chicago switching district would not be unreasonable for the future application on all of the commodities switched within the district, except railway equipment on its own wheels, and in the order issued therein required that respondents accordingly as they participate in the transportation establish on or before November 10, 1931, upon statutory notice and thereafter maintain and apply to the interstate transportation of all commodities in carloads in switching service as described in the report, except railway equipment on its own wheels, between all points in the Chicago switching district, rates, charges and minimum weights not in excess of those found by the Commission in its said report to be reasonable.

The local traffic or 1-line hauls of your petitioner is specifically dealt with in the following excerpt from pages 696 and 697 of said report:

"Packing-house products. This testimony dealt almost exclusively with the short hauls within the stockyards district over the Chicago Junction Railway, which has divided its line into districts. Within those districts are located points between which there are movements of certain commodities. That carrier was not selected as one of the cost study roads. Its movements, all intrastate, range from 200 feet to a mile. The preponderance of the movement is in privately owned refrigerator cars, usually loaded in both directions, for which an indirect allowance is made by way of difference in the switching charges as between carrier and private cars. It was pointed out that the number of

cars owned by the Chicago Junction is inadequate to handle the business and without the use of those private cars the carrier would necessarily incur a per diem charge of $1 per car for the use of foreign cars. The table below, compiled from one of the shippers' exhibits, shows the present charges applying on this line for both interdistrict and intradistrict movements:

	Intradistrict	Interdistrict
Chicago Junction cars		
Loaded	$3.15	(1)
Empty	3.15	$4.50
Private Cars:		
Loaded	3.15	12.00
Empty	3.15	4.50

(1) 2.5 cents, minimum 60,000 pounds

While the record is not entirely clear, the Chicago Junction apparently proposes to increase all of its rates to the Lowrey basis, except that it desires to continue the present [fol. 1571] charges of $3.15 and $7.15 per car for intradistrict movements. The charges of $12 and $15 per car for interdistrict movements would be increased to $18 under the proposed rate of 3 cents, minimum 60,000 pounds. As the actual hanging loads weigh 25,000 pounds and the floor loads 35,000 pounds, the increase to $18 per car would, in fact, result in increasing the rates to 7.2 cents and 5.1 cents per 100 pounds for the comparatively short 1-line hauls referred to above.

In view of the nature of these movements, most of which are purely intraplant, and all intrastate in character, over comparatively short hauls, they can not be considered as representative of the movements in general throughout the district. We accordingly make no findings as to this particular traffic."

In view of the fact that all of the one-line hauls performed by your petitioner are intrastate in character as stated in the report and as no findings were made as to this particular traffic the order issued therein required no change in the rates applicable thereon, and therefore, such rates were not subjected to increases as were the interstate rates for 2-line and 3-or more-line hauls.

In a supplemental report in said proceedings, Docket 19610, et al., (mimeographed), dated July 3, 1933, the Commission found that the maintenance of intrastate switching rates and carload minimum weights in Illinois and Indiana between points within the Chicago switching district for 1-line, 2-line, and 3-or-more-line movement on a lower basis than the corresponding all-commodity rates and minimum weights for 1-line, 2-line, and 3-or-more-line movements found not unreasonable and approved for interstate transportation in switching service had not been shown to have caused or to cause any undue preference and advantage of persons or localities in intrastate commerce, or any undue prejudice and disadvantage to persons or localities in inter-[fol. 1572] state commerce, but that the maintenance of such lower intrastate rates results, and will for the future result in undue discrimination against interstate commerce.

The order issued in connection with said supplemental report in part reads as follows:

"And it appearing, That the respondent carriers parties hereto having published all-commodity 1-line, 2-line and 3-or more-line switching rates and minimum weights for application to interstate transportation in switching service in the Chicago switching district which comply with the Commission's findings in the prior report in Docket No. 19610, Switching Rates in Chicago District, 177 I. C. C. 669, but continue to publish for intrastate application to similar traffic in 1-line, 2-line, and 3-or more-line movements in the Chicago switching district within the States of Illinois and Indiana switching rates and minimum weights which are upon a substantially lower basis:

It is ordered, That respondents herein, according as they participate in the transportation be, and they are hereby, notified and required to cease and desist on or before September 20, 1933, from practicing the unjust discrimination found in said report to exist in relation of interstate and intrastate all-commodity switching rates and charges for transportation in switching service in the Chicago switching district within the states of Illinois and Indiana.

It is further ordered, That said respondents according as they participate in the transportation be, and they are hereby, notified and required to establish on or before Sep-

tember 20, 1933, and thereafter to maintain switching rates [fol. 1573] and charges on all-commodity basis for switching service in intrastate commerce in the Chicago Switching district within the states of Illinois and Indiana which shall be not less than the rates contemporaneously applied by said carriers to the transportation by them of all-commodities in interstate switching service between points in the Chicago switching district in the states of Illinois and Indiana."

At sheet 32 of the supplemental report reference is made to the criticism offered by certain protestants for the failure to include in the cost study the 1-line hauls of your petitioner and in a foot note the following statement appears:

"In view of the nature of these movements, most of which are purely intraplant, and all intrastate in character, over comparatively short hauls, they can not be considered as representative of the movements in general throughout the district, we accordingly make no findings as to this particular traffic."

In view of the above statement by the Commission in both the original and supplemental reports and the fact that your petitioner had made no increases in its 1-line haul rates following the issuance of the original order covering interstate traffic, it was questionable whether your petitioner was required or authorized by the supplemental order to increase its 1-line haul rates applicable on intrastate traffic, but after careful consideration and in order that it might not be charged with being in contempt of the order, a tariff, Chicago Junction Railway (The Chicago River & Indiana Railroad Company, Lessee), I. C. C. C. J. No. 53 was published and filed to become effective September 20, 1933 (later postponed to October 20, 1933), cancelling C. J. Ry. Tariff No. 22 M, I. C. C. C. J. No. 44 and C. J. Ry. Tariff No. 25 C, I. C. C. C. J. No. 2, and increasing all of its interdistrict 1-line haul rates to the basis found [fol. 1574] reasonable and approved for interstate traffic in the original decision. No change was made, however, in its intradistrict 1-line haul rates which as found by the Commission at page 697 of the original report are mostly purely intraplant movements.

The Commission now has before it a petition filed by certain shippers protesting against the action of your petitioner and certain other respondents in failing to make the all-commodity rate basis applicable on all traffic within the switching district and seeking to have the order set aside or modified in whole or in part. As a result of said petition it is expected that the Commission will clarify its order so that there may be no question as to what traffic is included therein and what traffic, if any, is excluded therefrom, and your petitioner, therefore, requests that it be granted authority under section 6 of the act to amend its tariffs to the extent necessary to place them in strict conformity with the order as construed by the Commission.

The authority which your petitioner herein seeks is as follows:

In the event the Commission construes its opinions and orders as not to include the 1-line haul rates of the Chicago Junction, your petitioner requests permission to file a supplement to Chicago Junction Railway (The Chicago River & Indiana Railroad Company, lessee), I. C. C. C. J. 53, re-establishing therein on one day's notice effective October 20, 1933, the local and proportional switching rates now contained in Chicago Junction Railway (The Chicago River & Indiana Railroad Company, lessee), Tariff No. 22 M, I. C. C. C. J. No. 44, under Items Nos. 125, 130, 131, 140 and 145 on page 6 thereof. Also to file a tariff re establishing a rate of $7.65 per car on Manufacturing Plant [fol. 1575] Refuse between industries, team tracks and connecting lines now contained in Chicago Junction Railway (The Chicago River & Indiana Railroad Company, lessee) Tariff No. 25-C, I. C. C. C. J. No. 2.

Your petitioner further represents that in the event the above request is granted the said rates above mentioned will be published in Chicago Junction Railway Freight Tariff No. 25-D, I. C. C. C. J. No. 55, and supplement No. 2 to Chicago Junction Ry. Tariff No. 22-N, I. C. C. C. J. No. 53, both to become effective October 20, 1933, and will supersede and take the place of the rates on like traffic between the same points which are set forth in Chicago Junction Railway (The Chicago River & Indiana Railroad

Company, lessee) Tariff No. 22-N, I. C. C. C. J. No. 53, on file with the Commission.

Chicago Junction Railway (The Chicago River & Indiana Railroad Company, Lessee), by Leroy Blue, Its General Freight Agent.

Subscribed and sworn to before me this 26th day of Sept., 1933. H. C. Christensen, Notary Public. My commission expires Sept. 9, 1937. (Notary Seal.)

[fols. 1576 & 1577] PETITIONER'S EXHIBIT 3

Rates in Cents per 100 Pounds, Minimum Weight 60,000 Pounds (Except as Noted)

	(1) CJ ICC 44		(2) CJ ICC 53	
	Inter-District.	Intra-District.	Inter-District.	Intra-District.
All carload freight except coal	2½	⁂715	3	⁂715
Coal	1½	⁂715	3	⁂715
Empty freight cars	⁂450	⁂315	⁂450	⁂315
Bituminous coal on which the C. J. has had a previous switch haul, reloaded from coal storage yards for movement to consuming plants located on C. J.	*1	*1	3	3
All freight (except coal, grain and grain screenings) between junctions with connecting lines and industries and team tracks	2	2	3	3
Between junctions with connecting lines and industries: Coal	1½	1½	3	3
Grain and grain screenings to industries	⁂495	⁂495	3	3
Grain and grain screenings from industries	⁂675	⁂675	3	3

⁂ Cents per car of any weight.
* Minimum weight 80,000 pounds.
(1) Items 125, 130, 131, 140, 145.
(2) Items 125, 130, 140.

[fol. 1578] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING MOTION FOR STAY OF ORDER OF THE INTERSTATE COMMERCE COMMISSION, DATED JULY 3, 1933, PENDING APPEAL TO THE SUPREME COURT AND REQUIRING DEFENDANT CARRIERS TO PRESERVE AND ACCOUNT FOR ALL AMOUNTS RECEIVED BY THEM BY VIRTUE OF SAID ORDER OF THE INTERSTATE COMMERCE COMMISSION—NOV. 15, 1933

This cause coming on to be heard on motion of plaintiffs for the entry of an order staying the effective date of the order of the Interstate Commerce Commission, dated July 3, 1933, as set forth in the bill of complaint in the above entitled cause, pending appeal to the Supreme Court of the United States from the final order and decree of this Court dismissing said bill of complaint for want of equity, and the Court having heard the evidence adduced by plaintiffs and the arguments of counsel upon the hearing of this motion, and being fully advised in the premises, finds that said application should be denied.

The Court further finds that the defendant carriers, and each of them, should keep accurate account in detail of all amounts received by them by reason of the increases in the rates as authorized and required by said order of the Interstate Commerce Commission, dated July 3, 1933, specifying [fols. 1579 & 1580] by whom or in whose behalf such increases are paid, pending the final determination of this cause, and if upon the final determination of this cause the said order of the Interstate Commerce Commission shall be set aside or annulled, the said defendant carriers, and each of them, shall refund such increases with interest, to the persons by whom, or in whose behalf, such amounts were paid by reason of the increases in the rates as authorized and required by said order of the Interstate Commerce Commission, of July 3, 1933.

It is therefore ordered, adjudged, and decreed, this 15th day of November, 1933, that said motion of plaintiffs for stay of said order of the Interstate Commerce Commission, dated July 3, 1933, pending appeal to the Supreme Court of the United States, be, and the same is hereby denied.

It is further Ordered, Adjudged and Decreed, that the defendant carriers, and each of them, shall keep accurate

account in detail of all amounts received by them by reason of the increases in the rates as authorized and required by said order of the Interstate Commerce Commission, dated July 3, 1933, specifying by whom, or in whose behalf, such increases are paid, pending the final determination of this cause, and if upon the final determination of this cause the said order of the Interstate Commerce Commission shall be set aside or annulled, the said defendant carriers, and each of them, shall refund such increases, with interest, to the persons by whom, or in whose behalf, such amounts were paid by reason of the increases in the rates as authorized and required by said order of the Interstate Commerce Commission, of July 3, 1933.

Albert B. Anderson, Circuit Judge. James H. Wilkerson, District Judge. John P. Barnes, District Judge.

[fols. 1581 & 1582] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed Nov. 16, 1933

Illinois Commerce Commission, Public Service Commission (of Indiana), Board of Trade of the City of Chicago, and Acme Steel Company, plaintiffs, feeling themselves aggrieved by the final order or decree of the United States District Court for the Northern District of Illinois, Eastern Division, dated November 8, 1933, which denied the relief sought and dismissed the bill, pray an appeal therefrom to the Supreme Court of the United States, for the reasons set forth in the assignment of errors filed herewith. They pray that their appeal be allowed and that citation be issued as provided by law, and that the transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States, and, desiring to supersede the order of this Court of November 8, 1933, denying the plaintiffs' request for an injunction restraining and suspending the enforcement, operation and execution of the order of the Interstate Commerce Commission complained of herein, petitioners here tender bond in such amount as the Court may require for such purpose and

pray that with the allowance of the appeal a supersedeas be issued.

Otto Kerner, Attorney General of Illinois; Irvin Rooks, Harry R. Booth, Assistant Attorneys General of Illinois, Solicitors for Illinois Commerce Commission. Philip Lutz, Jr., Attorney General of Indiana; Herbert J. Patrick, Deputy Attorney General of Indiana, Solicitors for Public Service Commission (of Indiana). Herbert J. Campbell, Solicitor for Board of Trade of the City of Chicago. Luther M. Walter, Solicitor for Acme Steel Company.

[fols. 1583 & 1584] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING APPEAL—Nov. 16, 1933

Plaintiffs, having filed their petition for appeal herein, same is hereby granted and the plaintiffs are hereby allowed to appeal said case, and

It is ordered, that said appeal be and the same is hereby entered to the Supreme Court of the United States upon the filing of a bond by the said plaintiffs in the sum of One Thousand ($1,000.00) Dollars, with good and sufficient surety to be approved by this Court, conditioned upon said plaintiffs prosecuting their appeal to effect, and answering all costs if they fail to make their appeal good. Plaintiffs' request for supersedeas is hereby denied.

Dated this 16th day of November, 1933.

—— ——, United States Circuit Judge. James H. Wilkerson, United States District Judge. John P. Barnes, United States District Judge.

[fol. 1585] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Nov. 16, 1933

Illinois Commerce Commission, Public Service Commission (of Indiana), Board of Trade of the City of Chicago,

and Acme Steel Company, plaintiffs herein, by their respective counsel, now come, and, in connection with their petition for appeal, file the following Assignments of Error on which they will rely on their appeal to the Supreme Court of the United States from the final order or decree of the District Court, herein, dated and entered November 8, 1933.

The Court erred:

1. In dismissing the bill of complaint.

2. In finding that the Interstate Commerce Commission's denial of plaintiffs' motions of January 28 and February 3, 1932, for a different cost study than that already made by the railroads did not constitute an abuse of discretion or denial of a full hearing.

3. In finding that the order of the Interstate Commerce Commission of July 3, 1933, is supported by sufficient evidence.

4. In finding that the order of the Interstate Commerce Commission of July 3, 1933, contains adequate findings of fact.

5. In finding that the order of the Interstate Commerce Commission of July 3, 1933, is sufficiently definite and certain.

6. In finding that the Interstate Commerce Commission had full power and authority to make its order of July 3, 1933, complained of.

7. In finding that the Interstate Commerce Commission's denial of plaintiffs' petition of August 15, 1933, for reopening for further hearing, for setting aside of the order of July 3, 1933, for reargument and/or reconsideration, did [fols. 1586 & 1587] not constitute an abuse of discretion or denial of a full hearing.

8. In finding that the order of the Interstate Commerce Commission of July 3, 1933, complained of herein is a valid and subsisting order of said Commission.

9. In denying plaintiffs' motion for an order staying the effective date of the order of the Interstate Commerce Commission of July 3, 1933, pending the appeal to the Supreme Court of the United States.

10. In failing to find the facts specially and to state separately its conclusions of law thereon as required by Equity Rule 70½.

11. In failing to enjoin, annul and set aside the order of the Interstate Commerce Commission of July 3, 1933.

Wherefore, complainants and each of them pray that the final order and decree of the District Court, dated and entered November 8, 1933, be set aside and that they be granted relief as prayed in their original petition.

Otto Kerner, Attorney General of Illinois; Irvin Rooks, Harry R. Booth, Assistant Attorneys General of Illinois, Solicitors for Illinois Commerce Commission. Philip Lutz, Jr., Attorney General of Indiana; Herbert J. Patrick, Deputy Attorney General of Indiana, Solicitors for Public Service Commission (of Indiana). Herbert J. Campbell, Solicitor for Board of Trade of the City of Chicago. Luther M. Walter, Solicitor for Acme Steel Company.

[fols. 1588-1590] Bond of Acme Steel Company on appeal for $1,000.00, approved and filed Nov. 21, 1933, omitted in printing.

[fols. 1591 & 1592] IN UNITED STATES DISTRICT COURT.

[Title omitted]

ORDER PERMITTING WITHDRAWAL OF TRANSCRIPT OF TESTIMONY FOR PURPOSE OF ABSTRACTING SAME—NOV. 21, 1933

On application of counsel for plaintiff, Acme Steel Company, for leave to withdraw from the Clerk's office the transcript of evidence in Interstate Commerce Commission Dockets 19610 and 24950, in order that abstract of record may be prepared, in accordance with Equity Rule No. 75,

It is ordered that the transcript of evidence and exhibits in said numbered dockets before the Interstate Commerce

Commission, filed as part of the record herein, under the certificate of the secretary of the Interstate Commerce Commission, may be removed and kept in the custody of William E. Lamb, an attorney and officer of this Court, during the reasonable time necessary to reduce the same to the form required by said rule.

Dated at Chicago, November 21, 1933.

James H. Wilkerson, District Judge.

[fol. 1593] In United States District Court

[Title omitted]

Order Modifying Order Dated November 15, 1933, Denying Motion for Stay of Order of the Interstate Commerce Commission, Dated July 3, 1933—Nov. 21, 1933

This cause coming on to be heard on motion of plaintiffs for the entry of an order modifying the order of this Court heretofore entered on November 15, 1933, denying the motion of plaintiffs for the entry of an order staying the effective date of the order of the Interstate Commerce Commission dated July 3, 1933, as set forth in the bill of complaint in the above-entitled cause pending appeal to the Supreme Court of the United States from the final judgment and decree of this Court dismissing said bill of complaint for want of equity, and the Court having heard the arguments of counsel upon the hearing of this motion for modification of said order and being fully advised in the premises finds that said order heretofore entered on the 15th day of November, 1933, should be modified so as to require Charles M. Thomson as Trustee of the property of Chicago and Eastern Illinois Railway Company and The Chicago, Rock Island & Pacific Railway Company, as principals, to make, execute and deliver to the Clerk of this Court indemnity bonds in the sums of Ten Thousand Dollars ($10,000.00) and Fifteen Thousand Dollars ($15,000.00), respectively, with such surety or sureties as shall be approved by the Clerk of this Court for the use and benefit of all persons by whom or on whose behalf the intrastate rates, as required by the said order of the Intrastate Commerce Commission dated July 3, 1933,

more particularly referred to in said order of this Court, dated the 15th day of November, 1933, are paid to said Charles M. Thomson, as Trustee and to The Chicago, Rock Island & Pacific Railway Company, respectively, pending [to 1544] appeal to the Supreme Court of the United States from the final order and decree of this Court dismissing said bill of complaint for want of equity. Each of said bonds shall be upon the condition that, if the said order of the Interstate Commerce Commission shall be set aside and annulled and if, in that event, the Principal in said bond shall refund the increases in said rates directed by said order of the Interstate Commerce Commission, with interest, to the persons by whom or in whose behalf said amounts were or are paid to said Principal, or if said order of the Interstate Commerce Commission shall not be set aside and annulled by the Supreme Court of the United States, upon final disposition of this cause, the obligation of the bond is to be void, but that, in the event said order of the Interstate Commerce Commission is set aside or annulled by the Supreme Court of the United States in this cause and the said Principal fails to make refunds as aforesaid, the bond is to remain in full force and effect.

It is therefore ordered, adjudged and decreed this 28th day of November, 1933, that said order heretofore entered in this Court on the 15th day of November, 1933, shall be and said order is hereby modified as follows:

Charles M. Thomson, as Trustee of the Estate of Chicago and Eastern Illinois Railway Company and The Chicago, Rock Island & Pacific Railway Company are hereby required and directed within ten (10) days from the date of the entry of this order to make, execute and deliver to the Clerk of this Court bonds in the sums of Ten Thousand Dollars ($10,000.00) and Fifteen Thousand Dollars ($15,000.00), respectively, with such surety or sureties as shall be approved by the Clerk of this Court for the use and benefit of all persons by whom or on whose behalf the increases in the rates, as required by the said order of the Interstate Commerce Commission, dated [illegible], 1933, and more particularly referred to in said order of this Court dated the 15th day of November, 1933, are paid to said Charles M. Thomson, as Trustee, and to The Chicago, Rock Island & Pacific Railway Company, respectively, pending appeal to the Supreme Court of the United States

[fols. 1595 & 1596] from the final order and decree of this Court dismissing said bill of complaint for want of equity. Each of said bonds shall be upon the condition that, if the said order of the Interstate Commerce Commission shall be set aside and annulled and if, in that event, the Principal in said bond shall refund the increases in said rates directed by said order of the Interstate Commerce Commission, with interest, to the persons by whom or in whose behalf such amounts were or are paid to said Principal, or if said order of the Interstate Commerce Commission shall not be set aside and annulled by the Supreme Court of the United States, upon final disposition of this cause, the obligation of the bond is to be void, but that, in the event said order of the Interstate Commerce Commission is set aside or annulled by the Supreme Court of the United States in this cause and the said Principal fails to make refunds as aforesaid, the bond is to remain in full force and effect.

Circuit Judge. (Sgd.) James H. Wilkerson, District Judge. (Sgd.) John P. Barnes, District Judge.

[fol. 1597] In United States District Court

[Title omitted]

Order Enlarging Time Within Which to Docket Case and File a Record Thereof. Nov. 28, 1933.

It appearing that further time is required to reduce to narrative statement the testimony and exhibits contained in the voluminous transcript of the record of the evidence and proceedings before the Interstate Commerce Commission, now a part of the record before this Court, and to assemble, prepare and certify the transcript of record of this Court on the Appeal and for other good cause shown:

It is ordered, that the time in which the Illinois Commerce Commission, Public Service Commission of Indiana, Board of Trade of the City of Chicago, and Acme Steel Company, plaintiffs, shall furnish, serve and file in the office of the Clerk of the District Court their narrative statement of the evidence offered before the District Court and in which to cause the transcript of the record to be completed, and in which to docket the case and file the record

thereof with the Clerk of the Supreme Court of the United States, be, and it is hereby, enlarged to and including the 31 day of December, 1933.

——— ———, Circuit Judge. James H. Wilkerson, District Judge. John P. Barnes, District Judge.

[fols. 1598 & 1599] Dated ——— ———, ———.

The entry of the foregoing order enlarging the time within which to docket the case and file the record hereof is hereby consented to.

———, Solicitor for United States of America. H. L. Underwood, by Charles M. Bates, Clerk, Solicitor for Interstate Commerce Commission. James Stillwell, Solicitor for Railroad Defendants.

[fol. 1600] In United States District Court

[Title omitted]

Order Further Enlarging Time Within Which to Docket Case and File a Record Thereof—Dec. 27, 1933

It appearing that further time is required to reduce to narrative statement the testimony and exhibits contained in the voluminous transcript of the record of the evidence and proceedings before the Interstate Commerce Commission, now a part of the record before this Court, and to assemble, prepare and certify the transcript of record of this Court on the Appeal, and for other good cause shown;

It is ordered, that the time in which the Illinois Commerce Commission, Public Service Commission (of Indiana), Board of Trade of the City of Chicago, and Acme Steel Company, plaintiffs, shall furnish, serve and file in the office of the Clerk of the District Court their narrative statement of the evidence offered before the District Court and in which to cause the transcript of the record to be completed, and in which to docket the case and file the [fols. 1601 & 1602] record thereof with the Clerk of the Supreme Court of the United States, be, and it is hereby, further enlarged to and including the 31 day of January, 1934.

———, Circuit Judge. James H. Wilkerson, District Judge. ———, District Judge.

Dated December 27, 1933.

The entry of the foregoing order further enlarging the time within which to docket the case and file the record thereof is hereby consented to.

_____, Solicitor for United States of America.
H. L. Underwood, per L. M. Bates, Solicitor for Interstate Commerce Commission.
_____, Solicitor for Railroad Defendants.

[fol. 1603] In United States District Court

[Title omitted]

Order Further Enlarging Time Within Which to Docket Case and File a Record Thereon — Jan. 26, 1934

It appearing that the parties and their counsel are distant and that further time is required to reduce to narrative statement the testimony and exhibits contained in the voluminous transcript of the record of the evidence and proceedings before the Interstate Commerce Commission, now a part of the record before this Court, and to assemble, prepare and certify the transcript of record of this Court on the Appeal, and for other good cause shown;

It is ordered, that the time in which the Illinois Commerce Commission, Public Service Commission (of Indiana), Board of Trade of the City of Chicago, and Acme Steel Company, plaintiffs, shall furnish, serve and file in the office of the Clerk of the District Court their narrative statement of the evidence offered before the District Court and in which to cause the transcript of the record to be completed, and in which to docket the case and file the record thereof with the Clerk of the Supreme Court of the United States, be, and it is hereby further enlarged to and including the 28th day of February, 1934.

_____, Circuit Judge. _____, District Judge.
John P. Barnes, District Judge.

[fols. 1604 & 1605] Dated January 26, 1934

The entry of the foregoing order further enlarging the time within which to docket the case and file the record thereof is hereby consented to.

Elmer B. Collins, Solicitor for the United States of America. H. L. Underwood, Solicitor for Interstate Commerce Commission. J. N. Davis, Solicitor for Railroad Defendants.

[fols. 1606 & 1607] In United States District Court

[Title omitted]

Waiver of Notice Under Rule 75, and Consent to Approval of Narrative Statement—Feb. 12, 1934

We, the undersigned, solicitors for the defendants, and for intervening defendant, Interstate Commerce Commission, hereby waive the notice provided for in Rule 75 of the Rules of Courts of Equity of the United States as to notice of the lodgment of the narrative statement of the evidence and consent that said narrative statement may be approved by the Court as a part of the record for the purposes of the appeal.

Elmer B. Collins, Solicitor for the United States of America. J. N. Davis, Solicitor for Defendant railroad companies. Daniel W. Knowlton, Solicitor for the Interstate Commerce Commission.

[fols. 1608 & 1609] In United States District Court

[Title omitted]

Order Approving Narrative Abstract of Transcript of Record—Feb. 12, 1934

It appearing that solicitors for plaintiffs have reduced the transcript of evidence before the Interstate Commerce Commission to narrative form in accordance with the requirements of Equity Rule 75 of the Rules of Courts of Equity of the United States and have lodged the same in the Clerk's office on this date, and that solicitors for the defendants, United States of America, the railroad defendants and the intervening defendant, Interstate Commerce Commission, have in writing waived the ten days notice provided for in said rule and have consented to the approval by this Court of the said narrative abstract of evidence, and it further appearing that said narrative statement is true, complete and properly prepared,

It is ordered, that said narrative statement be, and it is hereby approved this 12th day of February, 1934.

Approved

John P. Barnes, District Judge.

[fol. 1610] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO EXHIBITS—Filed Feb. 12, 1934

It is hereby agreed and stipulated, by and between the parties to the above entitled action, through their respective counsel, that, with the approval of the court, the 134 exhibits, consisting of 2,071 pages, received in evidence by the especially constituted district court, and which are a part of the transcript of appeal in the above entitled cause, need not be printed in the record, because of the volume of said exhibits and the expense of printing them, but that each party to said litigation may refer to said exhibits, in brief or in argument, the same as though they had been printed in said record.

The said exhibits were offered and received in evidence at the trial before the Interstate Commerce Commission in the proceedings entitled "Switching Rates in the Chicago Switching District, Docket 19610" and "Acme Steel Company v. Atchison, Topeka & Santa Fe Railway Company, et al., Docket 24950".

Attached to and made a part of this stipulation is a concise statement of the exhibits referred to showing the names of the witnesses, or by whom said exhibits were offered, and a short statement of what each of said exhibits shows.

[fol. 1611] That this stipulation, together with the attached explanation of said exhibits, is to be printed as a part of the printed record.

Illinois Commerce Commission, Public Service Commission (of Indiana), Board of Trade of the City of Chicago, Acme Steel Company, by Luther M. Walter, Their Counsel. United States of America, by Elmer B. Collins, Its Counsel. Alton Railroad Company et al., by J. N. Davis, Their Counsel. Interstate Commerce Commission (Intervener), by Daniel W. Knowlton, Its Counsel.

[fol. 1612]

Chronological List of Exhibits in Chicago Switching Case, I. C. C. Dockets 19610 and 24950

Docket 19610		Number of pages
Exhibit No. 1.	Witness E. F. Saur. Study of Terminal Costs prepared under Provisions of Saur-Coverston Formula for Assignment of Operating Expenses. (Details of station clerical costs.)	19
Exhibit No. 2.	Witness E. F. Saur. Study of Terminal Costs prepared under Provisions of Saur-Coverston Formula for Assignment of Operating Expenses. (Details of engine hour costs.)	55
Exhibit No. 3.	Witness E. F. Saur. Study of Terminal Costs prepared under Provisions of Saur-Coverston Formula for Assignment of Operating Expenses. (Statement showing cost per car per day for Freight Train Train Car Repairs, Depreciation and Retirements, for Individual Trunk Line Roads and Composite for Such Roads, Based on the year 1926.)	1
Exhibit No. 4.	Witness E. F. Saur. Study of Terminal Costs prepared under Provisions of Saur-Coverston Formula for Assignment of Operating Expenses. (Summary of output per engine hour.)	17
Exhibit No. 5.	Witness E. F. Saur. Saur-Coverston Formula for the Assignment of Certain Operating Expenses to Determine the Terminal Costs of Handling Freight Traffic	76
Exhibit No. 6.	Witness E. F. Saur. Map of Chicago Switching District with Cost Study Carriers shown in red, and non-Cost Study Carriers shown in black.	1
Exhibit No. 2-A. (Amendment to Ex. 2)	Witness E. F. Saur. Study of Terminal Costs Prepared under Provisions of Saur-Coverston Formula for Assignment of Operating Expenses. (Amendment to details of engine hour costs, C. B. & Q. Ry., pp. 8 and 9.)	3
Exhibit No. 7.	Witness E. F. Saur. Study of Terminal Costs Prepared under Provisions of Saur-Coverston Formula for Assignment of Operating Expenses. (Average operating costs, 1, 2 and 3-line hauls—excluding traffic moving between Chicago and Chicago Heights Districts.)	5
Exhibit No. 8.	Witness E. F. Saur. Study of Terminal Costs Prepared under Provisions of Saur-Covertson Formula for Assignment of Operating Expenses. (Average operating costs for 2, 3 and 4-line hauls—	

		Number of pages
[fol. 1618]	traffic moving between Chicago and Chicago Heights Districts.)	5
Exhibit No. 9.	Witness G. F. Vivian. Traffic Analysis of Carload Commodities Handled in Switching Service in Chicago Switching District and Between Gary, Chicago Heights and Points within the Chicago Switching District During the Month of September, 1926	9
Exhibit No. 10.	Witness G. F. Vivian. Traffic Analysis of Carload Freight Handled in Chicago Switching District–September, 1926	1
Exhibit No. 11.	Witness G. F. Vivian. Traffic Analysis of Carload Commodities Handled in Switching Service. (Details by commodity groups—1, 2 and 3-line hauls.)	4
Exhibit No. 12.	Witness C. W. Galligan. A letter from Secretary McGinty to C. W. Galligan explaining action of Division 2 in suspending schedules to become effective April 25, 1926, proposing changes in rates on iron and steel articles, carloads, between points in Illinois Freight territory	2
Exhibit No. 13.	Witness G. W. Oliver. Analysis of Switching Service and Cost, Description of Routes, Operating Results of Switching Railroads Operating in the Chicago Switching District	51
Exhibit No. 14.	Witness J. P. Haynes. "Copy of Original Agreement as to rates and territory for the Chicago Switching District dated May 2, 1910."	3
Exhibit No. 15.	Witness J. P. Haynes. Official Map of Chicago District. (Regular switching charge of 2.5 cents for 2-line, and 3 cents for 3-line hauls does not apply to industries shown on red line. Green line—arbitrary of .5 cent in addition to regular switching charges.)	1
Exhibit No. 16.	Witness J. P. Haynes. List of stations and industries located at such stations within the Chicago Switching District excepted from the Application of the Uniform Joint Rates (switching) as published by C. W. Galligan and distance from principal points of interchange, and rates to stations on the C. & N. W. Ry. on moving commodities	13
Exhibit No. 17.	Witness J. P. Haynes. Exhibit in support of the principles of constructing switching rates as advocated by the Chicago Association of Commerce showing: The relationship of rates applicable on ex-lake shipments to rates applicable on ex-rail shipments	11

[fol. 1614]

		Number of pages.
Exhibit No. 18.	Witness W. J. Hammond. Statement showing range of switching rates between industries within the following switching districts: Buffalo, N. Y., Cincinnati, O., Cleveland, O., Detroit, Mich., Pittsburgh, Pa., St. Louis, Mo.	7
Exhibit No. 19.	Witness R. C. Livingston. Statement of 100 cars shipped by Interstate Iron & Steel Company to customers in the Chicago Switching District showing car detention	5
Exhibit No. 20.	Witness J. T. Forrest. Statement of all carload pig iron shipments made during the year 1926 by the By-Products Coke Corp. (Federal Furnace Plant), located at South Chicago, Ill., on the I. H. B. R. R. and Penna. Co	1
Exhibit No. 21.	Witness J. T. Forrest. Statement of all miscellaneous carload shipments made during the year 1926 by the By-Products Coke Corp. (Federal Furnace Plant), located at South Chicago, Ill., on the I. H. B. R. R. and Penna. Co	1
Exhibit No. 22.	Witness J. T. Forrest. Statement of all carload shipments made during the year 1926 by the By-Products Coke Corp. (Coke Plant), located at South Chicago (So. Deering Station), on the Chicago Short Line Ry	1
Exhibit No. 23.	Witness J. T. Forrest. Carriers' records of movements of certain cars switching in the Chicago District and their analysis of cost of same	8
Exhibit No. 24.	Witness F. E. Webster. C. & E. I. Ry. map showing tracks and industries at Chicago Heights, Ill	1
Exhibit No. 25.	Witness F. E. Webster. Official map of Chicago Switching District with changes since 1911 and suggested changes by C. & E. I. Ry	1
Exhibit No. 26.	Witness F. E. Webster. Letter dated February 11, 1927, "Rates and division between Chicago and Chicago Heights, Ill." addressed to Mr. J. B. Ford, signed by F. E. Webster. This included a call for a meeting of Illinois Freight Asso. on the subject "Rates on all commodities between points within Chicago Switching District, etc."	6
Exhibit No. 27.	Witness F. E. Webster. Letter of H. I. Miller of C. & E. I. R. R. Co. to Chicago Heights Terminal Trans. R. Co.	2

[fol. 1615]

		Number of pages.
Exhibit No. 28.	Witness F. E. Webster. Statement of present and proposed rates on iron and steel articles, carloads, between industries located on the C. H. T. T. R. R. at Chicago Heights, Ill. and industries on the B. & O. CT. R. R., located within the Chicago-Chicago Heights Switching District....	2
Exhibit No. 29.	Witness R. I. Pierce. Excerpt from Chicago Terminal Transfer R. R. Tariff I. C. C. # 13.....	1
Exhibit No. 30.	Witness R. I. Pierce. Chronological history of carload rates between Chicago Heights, Ill. and the Chicago Switching District as compared with the carload rates applying within the Chicago Switching District.....	1
Exhibit No. 31.	Witness R. I. Pierce. Statement of the basis of carload rates now under suspension between Chicago Heights and the Chicago Switching District as compared with rates now under suspension between points in the Chicago Switching District.....	1
Exhibit No. 32.	Witness R. I. Pierce. Statement showing carload traffic moving between Chicago Heights and the Chicago Switching District via B. & O. C. T. and the C. & E. I. from January 1, to December 31, 1927.....	1
Exhibit No. 33.	Witness R. I. Pierce. Statement showing distances from Chicago Heights to all stations on the B. & O. C. T. and C. & E. I. taking carload rate of 2.5 cents per 100 pounds, carload minimum 60,000 pounds.....	1
Exhibit No. 34.	Witness R. I. Pierce. Statement showing list of manufacturers and industries located at Chicago Heights, Ill. who are shippers and receivers of carload freight between Chicago Heights and the Chicago Switching District.....	1
Exhibit No. 35.	Witness R. I. Pierce. Statement showing list of industries in the Chicago Switching District producing articles competitive with similar articles produced in Chicago Heights.....	1
Exhibit No. 36.	Witness E. L. Maynard. Shipments of crushed stone shipped during 1925 from Thornton, McCook and Bellwood, Ill., to points in the Chicago Switching District..	11
[fol. 1616]		
Exhibit No. 37.	Witness E. L. Maynard. Shipments of crushed stone shipped during 1926 from Thornton, McCook and Bellwood, Ill., to points in the Chicago Switching District.	14

		Number of pages.
Exhibit No. 38.	Witness W. J. Womer. Map of lower end of Lake Michigan and surrounding territory, showing a location of principal sand and gravel pits and stone quarries	1
Exhibit No. 39.	Witness W. J. Womer. This exhibit shows local rates via B. & O. C. T. from Thornton and McCook, Ill., to Illinois points and from the same origins to Indiana points	5
Exhibit No. 40.	Witness W. J. Womer. Crushed stone shipments within the Chicago Switching District, (year 1925)	1
Exhibit No. 41.	Witness W. J. Womer. Crushed stone shipments within Chicago Switching District, (year 1926)	1
Exhibit No. 42.	Witness W. J. Womer. Comparison of present and proposed rates on crushed stone, carloads, within the Chicago Switching District.	1
Exhibit No. 43.	Witness W. J. Womer. I. H. B. R. R. present and proposed local and proportional rates on crushed stone, carloads, from McCook, Ill	1
Exhibit No. 44.	Witness W. J. Womer. I. H. B. R. R. present and proposed local and proportional rates on crushed stone, carloads, from McCook, Ill	1
Exhibit No. 45.	Witness W. J. Womer. Freight rates on sand, gravel and crushed stone to Chicago	3
Exhibit No. 46.	Witness W. J. Womer. Miscellaneous commodity rates between Chicago and Joliet, Ill	3
Exhibit No. 47.	Witness W. J. Womer. Miscellaneous commodity rates on C. & N. W. Ry	1
Exhibit No. 48.	Witness W. J. Womer. Miscellaneous commodity rates on C. & N. W. Ry	3
[fol. 1617]		
Exhibit No. 49.	Witness F. B. McElroy. Exhibit of the Whitacer-Greer Fireproofing Co. showing history of hollow building tile rates from Chicago Heights, Ill., Pullman, Ill., and Hobart, Ind., to Chicago Switching District	5
Exhibit No. 50.	Witness H. G. Brown. Statement showing plant and location of Illinois Brick Company yards in the Chicago Switching District; Number of cars handled, tonnage and earnings per car, per car-mile and per ton-mile, on present and proposed basis of rates, together with increases	3

Exhibit No. 51. Witness H. G. Brown.

Statement showing points [illegible] nation, distance, number [illegible] and revenues of cars [illegible] cards of Illinois Brick [illegible] cago Switching District [illegible]

Exhibit No. 52. Witness H. G. Brown.

Statement showing points [illegible] nation, distance, number [illegible] and revenues of cars [illegible] cards of Illinois Brick [illegible] cago Switching District [illegible]

Exhibit No. 53. Witness H. G. Brown.

Statement showing points [illegible] nation, distance, number [illegible] and revenues of cars [illegible] cards of Illinois Brick [illegible] cago Switching District [illegible]

Exhibit No. 54. Witness H. G. Brown.

Statement showing [illegible] Brick Company cars [illegible] reported in Exhibit [illegible]

Exhibit No. 55. Witness J. L. Roberts.

Statement showing [illegible] rates on coal tar, also [illegible] car per mile revenue [illegible] rates from producing [illegible] Company's plant.

Exhibit No. 56. Witness J. L. Roberts.

Statement of switching [illegible]

Exhibit No. 57. Witness J. L. Roberts.

Statement of carload [illegible] road equipment and [illegible] ment at various points [illegible]

fol. 1618)

Exhibit No. 58. Witness J. S. Brown.

Absorption of cross [illegible] grain and grain [illegible] Ill., St. Louis, Mo. [illegible] other points.

Exhibit No. 59. Witness J. S. Brown.

Absorption of cross [illegible] grain and grain [illegible] and other points.

Exhibit No. 60. Witness J. S. Brown.

Absorption of cross [illegible] grain products [illegible] Transfer and St. [illegible]

Exhibit No. 61. Witness J. S. Brown.

Absorption of cross [illegible] grain and grain [illegible] Mo.-Kan., St. Joseph, [illegible] worth, Kansas, and other points.

Number of pages

Witness J. S. Brown

Extract of testimony of O. L. Coil of the C. M. & St. P. Ry. in I. C. C. Docket No. 15037 at Kansas City, Mo., March 3, 1924. 10

Witness J. S. Brown

Supplement No. 1 to Terminal R. R. Association of St. Louis, I. C. C. No. 129, Ill. I. C. C. No. 22, effective February 1, 1926. See No. [illegible] Rules and Terminal Charges. [illegible]

Witness C. W. Galligan

Rates on carload traffic between industries in the Chicago Switching District, as described in Agent C. W. Galligan's Tariff 21-M, which are an exception to or are at variance with the basis applicable generally in the district. [illegible]

Introduced by Counsel (Luther Walters)

Statement for and on behalf of the Gary Screw & Bolt Company, signed by B. Merle D. Perry, Pittsburgh, Pa. [illegible]

Introduced by Counsel (Luther Walters)

Statement for and on behalf of the Union Drawn Steel Company of Beaver Falls, Pa., signed by A. W. Hood, Traffic Mgr., Beaver Falls, Pa. [illegible]

Witness J. D. Forrest

Detailed reports of actual car movements from the plants of the By-Products Coke Corp. during the "state period," August 4-10, 1917, made under the supervision of the Witness by Chas. Calen, Yard Superintendent of the Coke plant. [illegible]

Witness E. C. Furry

Switching rates on C. & I. W. R. R. in Chicago district on which no revision is proposed. [illegible]

Witness E. C. Furry

Switching rates on I. C. R. R. in Chicago district on which no revision is proposed. [illegible]

Witness R. J. Pierce

Statement showing the relative importance of Chicago Heights, Ill., as an industrial community. [illegible]

Witness R. J. Pierce

Statement showing list of manufacturers located at Chicago Heights, Ill., and list of competitive industries within the Chicago Switching District. [illegible]

Witness R. J. Pierce

Map showing the location of industries within the Chicago Switching District producing articles competitive with industries located at Chicago Heights; also line of the B. & O. C. I., and the C. & I. I. R. R. [illegible]

		Number of pages
Exhibit No. 73	Witness R. I. Pierce Statement showing list of industries with private or individual sub-tracks located on the B. & O. C. T. R. R. in the Chicago Switching District	
Exhibit No. 74	Witness R. I. Pierce Statement showing list of industries located on the C. A. E. I. and C. A. W. I. in the Chicago Switching District	
Exhibit No. 75	Witness R. I. Pierce Statement showing present and suspended rates between industries located at Chicago Heights in the Chicago Heights Terminal Transfer R. R. and industries or stations located on various lines in the Chicago Sw. District, as compared with present and suspended rates between competitive industries located on various lines in the Chicago Switching District and industries or stations located on connecting lines in the Chicago Switching District (col. 1920)	
Exhibit No. 76	Witness R. I. Pierce Statement showing the revenue per car under the proposed joint line switching rates between points in the Chicago Switching District and between Chicago Heights and points in the Chicago Switching District as compared with the revenue per car on various commodities from and to Chicago	
Exhibit No. 77	Witness R. I. Pierce Map showing outline of territory where revenue per car from and to Chicago on various Commodities does not exceed $24.00	
Exhibit No. 78	Witness R. I. Pierce Statement showing the revenue per car on various commodities from and to Chicago	
Exhibit No. 79	Witness R. I. Pierce Map showing outline of territory where the revenue per car on various commodities from and to Chicago does not exceed $30.00	
Exhibit No. 80	Witness R. O'Hara Map of Chicago Junction Ry. Co. and the Chicago River & Indiana R. R. Co.	
Exhibit No. 81	Witness R. O'Hara Chronological statement of intra-district and inter-district switching charges of the Chicago Junction Railway from July 1, 1913 to and including the present date. (The statement shows the charges for loaded and empty movement of railway equipment as well as charges for loaded and empty movement of private equipment.)	

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Exhibit No. 82	Witness R. O'Hara Statement showing the number of cars switched in inter-district movement by the Chicago Junction Railway for account of Swift & Company and its subsidiaries for the period May, 1927 to and including April, 1928.	1
Exhibit No. 83	Offered by Counsel C. N. Davis Composite exhibit of shippers, carriers, and state commissions relating to the disposition of disputed facts on cost evidence and other matters. (Prepared by joint conference of representatives of carriers, shippers and state commissions.)	191
Exhibit No. 84	Offered by Counsel C. N. Davis Supplement to Exhibit No. 83	33
Exhibit No. 85	Witness C. W. Galligan Statement showing present exceptions to general uniform basis of rates, also changes proposed by carriers under Docket 19610, "General Investigation of Switching Rates in the Chicago District."	98
Exhibit No. 7-A	Witness G. F. Vivian Restatement of Exhibit No. 7 I. C. C. Docket 19610 showing total and average operating costs also present and proposed revenues by rate groups (Lowrey, over and under), further separated between interstate and intrastate traffic, one, two and three-line hauls. (Excluding traffic moving between Chicago and Chicago Heights districts.)	48
Exhibit No. 8-A	Witness G. F. Vivian Restatement of Exhibit No. 8 I. C. C. Docket 19610 showing total and average operating costs, also present and proposed revenues by rate groups (Lowrey, over and under), further separated between interstate and intrastate traffic for two, three and four-line hauls. Traffic moving between Chicago and Chicago Heights Districts.	20
Exhibit No. 11-A	Witness G. F. Vivian Restatement of Exhibit No. 11 I. C. C. Docket 19610 showing analysis of carload commodities handled in switching service. Details by commodity and rate groups further separated between interstate and intrastate traffic. 1, 2 and 3-line hauls. (Excluding traffic moving between Chicago and Chicago Heights Districts.	110
Exhibit No. 11-B	Witness G. F. Vivian Restatement of Exhibit No. 11 I. C. C. Docket 19610 showing analysis of carload commodities handled in switching service. Details by commodity and rate groups 2, 3 and 4-line hauls. (Traffic moving between Chicago and Chicago Heights Districts.)	74

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Exhibit No. 86	Witness G. W. Renwick Comparison of delivered prices on Chicago District stone with delivered prices on Joliet District gravel at points in the Chicago District	
Exhibit No. 87	Witness J. A. Behrle History of rates on sand and gravel, carload, from Joliet, Ill., to local deliveries on the A. T. & S. F. Ry., C. & A. R. R. and C. R. I. & P. Ry. at Chicago, Ill.	
Exhibit No. 88	Witness J. A. Behrle Analysis of stone producers' alternative proportion Dec. 1922	
Exhibit No. 89	Witness H. S. Brown Switching charges at Council Bluffs, Ia., Omaha, Neb., Kansas City, Mo.-Kan., St. Joseph, Mo., Minneapolis, Minn., Peoria-Pekin, Ill., and St. Louis-East St. Louis District	
Exhibit No. 90	Introduced by Counsel J. N. Davis Study of terminal costs prepared under provisions of Sam Cowerson formula for assignment of operating expenses. (Details of switching costs by element number)	
Exhibit No. 91	Introduced by Counsel J. N. Davis Study of terminal costs prepared under provisions of Sam Cowerson formula for assignment of operating expenses. (Details of switching and clerical costs by index numbers)	
Exhibit No. 92	Witness J. D. Forrest Comparison of interstate and Illinois switching movements of the By-Products Coke Corporation for the year 1926	
Exhibit No. 93	Witness J. D. Forrest Shipments of coke in 1926 to points within the Chicago Switching District taking rates in excess of the basis applicable generally within the District, compared with shipments to other points in the same routes at the regular rate of 60 cents per gross ton	
Exhibit No. 94	Witness J. D. Forrest List of commodities and rates of special interest to the By-Products Coke Corporation, which are an exception to, or are at variance with, the basis applicable generally in the District	
Exhibit No. 95	Witness H. G. Brown Statement of cars switched in Switching District 1926 (Illinois Brick Co.)	
Exhibit No. 96	Witness K. E. Thelin Exhibit relating to car repairs and switching costs. (Prepared by accounting section of Illinois Commerce Commission)	

		Number of pages
Exhibit No. 97	Witness G. F. Vivian Traffic analysis of carload commodities handled in switching service, showing present and proposed revenue by rate groups (Lowrey, over and under), further separated between interstate and intrastate traffic.	
Exhibit No. 98	Witness L. F. Sain Comparison of cost study, car detention, with car detention on cars selected by Illinois Commerce Commission.	
fol. 1623		
Exhibit No. 99	Witness G. F. Vivian Restatement of Exhibit No. 11-A, I. C. C. Docket 19610 showing revenue discrimination of carload commodities handled in switching service caused by refusal of State Commissions to permit present interstate rates to become effective on intrastate traffic. Illinois and Indiana. Details by commodities separated between Intrastate Traffic. Illinois and Indiana, 1, 2 and 3-line hauls. Excluding traffic moving between Chicago and Chicago Heights Districts.	10
Exhibit No. 99-A Exhibit No. 99 Revised	Witness G. F. Vivian Restatement of Exhibit No. 11-A, I. C. C. Docket 19610 showing revenue discrimination of carload commodities handled in switching service. Illinois and Indiana. Details by commodities separated between intrastate traffic. Illinois and Indiana, 1, 2 and 3-line hauls. Excluding traffic moving between Chicago and Chicago Heights Districts.	11
Exhibit No. 100	Witness G. F. Vivian Restatement of Exhibit No. 11-B, I. C. C. Docket 19610 showing revenue discrimination of carload commodities handled in switching service caused by refusal of State Commissions to permit present interstate rates to become effective on intrastate traffic. Illinois and Indiana. Details by commodities in intrastate traffic. Illinois, 2, 3 and 4-line hauls. Traffic moving between Chicago and Chicago Heights Districts.	6
Exhibit No. 100-A No. 100 Revised	Witness G. F. Vivian Restatement of Exhibit No. 11-B, I. C. C. Docket 19610 showing revenue discrimination of carload commodities handled in switching service. Illinois and Indiana. Details by commodities in intrastate traffic. Illinois, 2, 3 and 4-line hauls. Traffic moving between Chicago and Chicago Heights Districts.	
Exhibit No. 101	Witness G. F. Vivian Statement for week of November 9 to 15, 1931, inclusive showing revenue discrimination of carload commodities handled in switching service, caused by refusal of State Commis-	

		Number of pages
	sions to permit present interstate rates to become effective on intrastate traffic—Illinois and Indiana. Details by commodities separated between intrastate traffic—Illinois and Indiana, 1, 2, and 3-line hauls. (Excluding traffic moving between Chicago and Chicago Heights Districts.)	33
Exhibit No. 101-A.	Witness G. F. Vivian.	
No. 101 Revised.	Statement for week of November 9 to 15, 1931, inclusive showing alleged revenue discrimination of carload commodities handled in switching service—Illinois and Indiana. Details by commodities separated between intrastate traffic—Illinois and Indiana, 1, 2, and 3-line hauls. (Excluding traffic moving between Chicago and Chicago Heights Districts.)	28
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Exhibit No. 102.	Witness G. F. Vivian.	
	Statement for week of November 9 to 15, 1931, inclusive, showing revenue discrimination of carload commodities handled in switching service, caused by refusal of State Commissions to permit present interstate rates to become effective on intrastate traffic—Illinois. Details by commodities in intrastate traffic—Illinois, 2, 3, and 4-line hauls. (Traffic moving between Chicago and Chicago Heights.)	18
Exhibit No. 103.	Witness G. F. Vivian.	
	Statement for week of January 11 to 17, 1932, inclusive, showing revenue discrimination of carload commodities handled in switching service, caused by refusal of State Commissions to permit present interstate rates to become effective on intrastate traffic—Illinois and Indiana. Details by commodities separated between intrastate traffic—Illinois and Indiana, 1, 2 and 3-line hauls. (Excluding traffic between Chicago and Chicago Heights Districts.)	34
Exhibit No. 103-A.	Witness G. F. Vivian.	
No. 103 Revised	Statement for week of January 11 to 17, 1932, inclusive, showing alleged revenue discrimination of carload commodities handled in switching service—Illinois and Indiana. Details by commodities separated between intrastate traffic—Illinois and Indiana, 1, 2, and 3-line hauls. (Excluding traffic between Chicago and Chicago Heights Districts.)	28
Exhibit No. 104.	Witness G. F. Vivian.	
	Statement for week of January 11 to 17, 1932, inclusive, showing revenue discrimination of carload commodities handled in switching service, caused by refusal of State Commission to permit present interstate rates to become effective on intrastate traffic—Illinois. Details by commodities in intrastate	

		Number of pages
	traffic—Illinois, 2, 3 and 4-line hauls. (Traffic moving between Chicago and Chicago Heights Districts.)	18
Exhibit No. 105.	Witness G. F. Vivian. Statement for test period weeks November 9 to 15, 1931, inclusive, and January 11 to 17, 1932, inclusive, showing blockading of interstate traffic due to refusal of State Commissions to permit present interstate rates to become effective on intrastate traffic—Illinois and Indiana. Details by commodities for interstate traffic, 1, 2, and 3-line hauls. (Excluding traffic moving between Chicago and Chicago Heights Districts.)	35
Exhibit No. 105-A. No. 105 Revised	Witness G. F. Vivian. Statement for test period weeks November 9 to 15, 1931, inclusive, and January 11 to 17, 1932, inclusive, showing blockading of interstate traffic. Details by commodities for interstate traffic, 1, 2, and 3-line hauls. (Excluding traffic moving between Chicago and Chicago Heights Districts.)	30
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Exhibit No. 106.	Witness G. F. Vivian. Statements for test period weeks, November 9 to 15, 1931, inclusive, and January 11 to 17, 1932, inclusive, showing blockading of interstate traffic due to refusal of State Commission to permit present interstate rates to become effective on intrastate traffic—Illinois. Details by commodities for interstate traffic, 2, 3 and 4-line hauls. (Traffic moving between Chicago and Chicago Heights Districts.)	35
Exhibit No. 107.	Witness G. F. Vivian. Selected data of operating expenses, operating ratio, taxes, cars handled and appropriate averages, by years, for the period 1928 to 1931, both inclusive, for eight switching carriers of the Chicago District	10
Exhibit No. 108.	Witness G. F. Vivian. Selected data of operating expenses, operating ratio, taxes, cars handled and appropriate averages, by years, for the period 1928 to 1931, both inclusive, for seven trunk-line railroads entering Chicago District	9
Exhibit No. 109.	Witness G. F. Vivian. Railway operating revenues, expenses, net operating income, rate of return and operating ratio by Districts and the United States, for the years 1928, 1929, 1930 and 1931, Class I Railways—including large switching and terminal carriers	2
Exhibit No. 110.	Witness G. F. Vivian. Illustrations of carload movements within the Chicago District routed by industries to	

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	avoid interstate rates during period December 10, 1931, to March 31, 1932, both inclusive—1, 2, and 3-line hauls	19
Exhibit No. 110-A.	Witness G. F. Vivian. List of industries as coded on circuitous routing maps.—Supplement to Exhibit No. 110	3
Exhibit No. 111.	Witness G. F. Vivian. Form CSC-100. (Form for making report for traffic test.)	1
Exhibit No. 112.	Witness J. W. Brown. Map of Grasselli Chemical Company's tracks at Grasselli, Ind	1
Exhibit No. 113.	Witness J. W. Brown. Statement showing shipments of acid in tank cars from Grasselli, Ind., to points in Indiana in the Chicago Switching District; the freight rates paid and the revenue derived therefrom for the year 1930	1
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Exhibit No. 114.	Witness J. W. Brown. Destinations in the Chicago Switching District to which Grasselli Chemical Company ships acid in tank cars from Grasselli, Ind	1
Exhibit No. 115.	Witness J. W. Brown. Connections of the I. H. B. Ry. via which tank carloads of sulphuric acid are shipped from Grasselli, Ind	1
Exhibit No. 116.	Witness J. W. Brown. Record of cost of operation of the American Tank Line, owned and operated by the Grasselli Chemical Company, during the year 1930	1
Exhibit No. 117.	Witness J. W. Brown. Statement showing regularity of movement of tank carloads of acid from Grasselli, Ind., to points in Indiana in the Chicago Switching District	1
Exhibit No. 118.	Witness J. W. Brown. Statement of prices on sulphuric acid in tank cars in the Chicago District	1
Exhibit No. 119.	Witness J. E. Pierce. Map (South Chicago Coal & Dock Co.) of Chicago Switching District showing locations to which eastern bituminous coal was delivered with tonnages, year 1931	1
Exhibit No. 120.	Witness R. W. Fletcher. Analysis of switching service and costs, and operating results of switching railroads serving the Chicago Switching District. (Note—Examiners directed pages 1-28, both inclusive, and direct and cross examination in connection therewith, in 19610 Rec. page	

		Number of pages
	3057, be transferred physically to Record in 24950. No other exhibit number was assigned to the part transferred, however.)	34
Docket 24950		
Exhibit No. 1.	Witness F. S Holland.	
	Standard Oil Company map of Chicago and vicinity	1
Exhibit No. 2.	Witness G. H. Staat.	
	Shipments by Interlake Iron Corporation of coke, pig iron, sulphate of ammonia, ammoniacal liquor, tar and light oil, in tons. (Sept., 1926 Sept. 1931 and March 1932.)	1
Exhibit No. 3.	Witness R. I. Pierce.	
	Statement showing revenue per car under the Interstate switching rates in the Chicago District as compared with car revenue under various road-haul rates	11
	Total Number of Exhibits (19610 and 24950)	134
	Total Number of Pages of all exhibits	2,071

[fols. 1627 & 1628] [File endorsement omitted.]

[fol. 1629] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER AS TO EXHIBITS—Feb. 12, 1934

In accordance with the provisions of plaintiffs' præcipe for transcript of record on appeal of the above entitled matter to the Supreme Court of the United States, and it appearing that the parties have consented thereto,

It is hereby ordered, That the certified copies of Exhibits numbered 1 to 120, inclusive, which were attached to the certified record of the evidence and proceedings before the Interstate Commerce Commission in the matter entitled, "Switching Rates in the Chicago Switching District", Docket No. 19610, and the certified copies of Exhibits numbered 1 to 3, inclusive, attached to the certified record of the evidence and proceedings before the Interstate Commerce Commission in the matter entitled, "Acme Steel Company, et al, v. The Atchison, Topeka and Santa Fe Railway Company, et al.", Docket No. 24950, which were offered in evidence in the above entitled matter and filed in the office of the Clerk of the above entitled court on November 7, 1933, may be forwarded to the Clerk of the United States Su-

preme Court as a part of the transcript of the record on appeal herein.

Dated this 12th day of February, 1934.

—— ——, United States Circuit Judge. —— ——, United States District Judge. John P. Barnes, United States District Judge.

[fol. 1630] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Jan. 23, 1934

To the clerk of the above entitled court:

Please prepare a transcript of the record in the above entitled cause in the matter of the appeal therein and include in said transcript, in the order given below, the following matter, viz:

1. Bill of Complaint filed by plaintiffs October 5, 1933.

2. Answer of United States of America, filed October 13, 1933.

3. Intervention of Interstate Commerce Commission filed October 13, 1933.

4. Answer of Interstate Commerce Commission, filed October 13, 1933.

5. Answer of Carrier Defendants, filed October 13, 1933.

6. Narrative Abstract of Transcript of Record of the Evidence and proceedings before the Interstate Commerce Commission in the matter entitled "Switching Rates in the Chicago Switching District", Docket No. 19610, and the certified copies of exhibits numbered 1 to 120, inclusive, therein; and Acme Steel Company, et al. v. The Atchison, Topeka and Santa Fe Railway Company, et al., Docket No. 24950, and the certified copies of Exhibits numbered 1 to 3, inclusive, therein. (Exhibits are to be forwarded in original form and are not abstracted.)

7. Findings of Fact and Conclusions of Law of this Court, dated and entered November 3, 1933.

[fol. 1631] 8. Order of Court Denying Injunction and Dismissing Bill of Complaint, dated November 8, 1933.

9. Notice of and Motion for Stay of Order of the Interstate Commerce Commission, dated July 3, 1933, Pending Appeal to the Supreme Court.

10. Exhibits numbered 1, 2 and 3 offered at hearing on plaintiff's Motion for Stay of Order, on November 13, 1933.

11. Order of Court dated November 15, 1933, Denying Motion for Stay of Order of the Interstate Commerce Commission dated July 3, 1933, Pending Appeal to the Supreme Court and Requiring Defendant Carriers to Preserve and Account for all Amounts Derived by them By Virtue of Said Order of the Interstate Commerce Commission.

12. Petition for Appeal filed by plaintiffs on November 16, 1933.

13. Order of the above entitled Court granting appeal, dated November 16, 1933.

14. Assignment of Errors filed by plaintiffs on November 16, 1933.

15. Jurisdictional Statement, filed in accordance with Rule 12 of the Supreme Court, November 16, 1933.

16. Bond on Appeal approved November 21, 1933, filed November 22, 1933.

17. Citation on appeal, filed November 25, 1933.

18. Order for withdrawal of transcript of testimony before the Interstate Commerce Commission for purpose of making abstract thereof in accordance with the rules of the Supreme Court, dated November 21, 1933.

19. Order of the Court modifying order dated November 15, 1933, Denying Motion for Stay of Order of the Interstate Commerce Commission, dated July 3, 1933 by requiring the filing of a bond pending appeal by C. M. Thomson as Trustee for the Chicago and Eastern Illinois Railway Company and The Chicago Rock Island and Pacific Railway Company, dated November 28, 1933.

20. Order Enlarging Time Within Which to Docket Case and File a Record Thereof, dated and entered November 28, 1933.

21. Order Further Enlarging Time Within Which to Docket Case and File a Record Thereof, dated and entered December 27, 1933.

[fol. 1632] 22. This Præcipe for Transcript of Record filed January —, 1934.

23. All acknowledgments of receipt of copies of Petition for Appeal, Assignments of Error, Order Granting Appeal,

Citation on Appeal.
Præcipe for Transcript of Record.

3. Waiver of Notice under Rule 75 and Consent to Approval of Narrative Statement

3. Order Approving Narrative Abstract of Transcript of Record

4. Stipulation Providing that the Exhibits Need Not Be Printed in the Record

5. Order Allowing Withdrawal of Exhibits

6. This Supplemental Praecipe

Otto Kerner, Attorney General of Illinois, Irvin Rooks, Harry R. Booth, Assistant Attorneys General of Illinois, Solicitors for Illinois Commerce Commission. Philip Lutz, Jr., Attorney General of Indiana, Herbert J. Patrick, Deputy Attorney General of Indiana, Solicitors for Public Service Commission (of Indiana). Herbert J. Campbell, [fol 1637] Solicitor for Board of Trade of the City of Chicago. Luther M. Walter, Solicitor for Acme Steel Company.

Acknowledgment of Service

Service is hereby acknowledged of the within praecipe for Transcript of Record. No additional portions of the Record are desired to be incorporated into the Transcript.

Dated this 12 day of February, 1934.

Solicitor for United States of America.

Solicitor for Interstate Commerce Commission. J. N. Davis, Solicitor for Railroad Defendants.

[The endorsement omitted.]

[fol 1638] Clerk's Certificate to foregoing transcript omitted in printing.

[fol 1639] Supreme Court of the United States

Statement of Points to be Relied Upon and Designation as to Printing Record. Filed Feb. 15, 1934

Now come the appellants, in the above entitled cause and for their statement of points to be relied upon adopt their

assignments of error. Further complying with Paragraph 9 of Rule 13, appellants state that the entire record as certified by the Clerk of the United States District Court for the Northern District of Illinois, except the exhibits to the oral testimony taken before the Interstate Commerce Commission which are to be omitted from the printing of the record as per stipulation of counsel, is necessary for a full and fair consideration of the case.

Luther M. Walter, Counsel for Appellants.

Service of the above is acknowledged this 15th day of February, 1934.

Elmer B. Collins, for United States. J. N. Davis, for Railroads Defendants. Daniel W. Knowlton, for Interstate Commerce Commission.

[fol. 1640] [File endorsement omitted.]

Endorsed on cover: File No. 38,390. N. Illinois, D. C. U. S. Term No. 787. Illinois Commerce Commission, Public Service Commission (of Indiana), Board of Trade of the City of Chicago, and Acme Steel Company, Appellants, vs. The United States of America, The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company. Filed February 14, 1934. File No. 787, O. T., 1933.

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TABLE OF CASES CITED.

Beaumont, Sour Lake & Western Railroad Co. v. United States, 282 U. S. 92, 75 L. Ed. 221	4
Florida East Coast R. Co. v. United States, 234 U. S. 167, 58 L. Ed. 1267	4
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Louisville & N. R. Co. v. United States, 242 U. S. 60, 61 L. Ed. 152	4
Manufacturers R. Co. v. United States, 246 U. S. 457, 62 L. Ed. 831	4
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New England Divisions Case, 261 U. S. 184, 67 L. Ed. 605	4
Seaboard Airline R. Co. v. United States, 254 U. S. 57, 65 L. Ed. 129	4
Skinner & E. Corp. v. United States, 249 U. S. 557, 63 L. Ed. 772	4
Switching Rates in the Chicago Switching District, Docket 19610, 195 I. C. C. 89	3
Virginian Railway Co. v. United States, 272 U. S. 658, 71 L. Ed. 463	4

STATUTES AND AUTHORITIES CITED.

Judicial Code, Section 238 (28 U. S. C. A. 345)	2
United States Code Annotated, Title 28, Section 47 (Chapter 32, 38th Statute, 220, of October 20, 1913)	1, 5
Urgent Deficiency Appropriations Act of October 22, 1913, Chapter 32	3

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 787

ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION (OF INDIANA), BOARD OF TRADE OF THE CITY OF CHICAGO AND THE ACME STEEL COMPANY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

STATEMENT AS TO JURISDICTION ON APPEAL.

The appellants, and each of them, in support of the jurisdiction of the Supreme Court of the United States to review the above entitled cause on appeal, respectfully represent:

(A) Statutory Provisions Sustaining Jurisdiction.

Section 47 of Title 28, United States Code Annotated, being Chapter 32, 38th Statute, 220, of October 20, 1913, provides for the bringing of an action to set aside, in whole

or in part, any order made or entered by the Interstate Commerce Commission of the United States in any District Court of the United States, and that when such application is presented to the Judge of such District Court he shall immediately call to his assistance to hear and determine the application two other judges. Said section further provides as follows:

> "An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said Commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply."

Section 238 of the Judicial Code of the United States, being Section 345 of Title 28, United States Code Annotated, provides as follows:

> "A direct review by the Supreme Court of an interlocutory or final judgment or decree of a District Court may be had where it is so provided in the following sections and not otherwise: * * *
>
> (4) So much of section 47 of this Title as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend, or set aside orders of the Interstate Commerce Commission other than for the payment of money."

(B) Date of Decree and Date of Application for Appeal.

The decree sought to be reviewed was entered on the 8th day of November, 1933.

The application for appeal is presented on the 16th day of November, 1933.

(C) Nature of the Case and Ruling.

The action was brought by the Illinois Commerce Commission, the Public Service Commission (of Indiana), Board of Trade of the City of Chicago, and the Acme Steel Company, against the United States of America and the Alton Railroad Company and thirty-six other railroad common carriers, all operating within what is known as the Chicago switching district, as defendants, pursuant to the provisions of Chapter 32 of the Urgent Deficiency Appropriations Act, approved October 22, 1913, to enjoin, set aside, annul, suspend and restrain the enforcement, operation and execution of an order of the Interstate Commerce Commission entered July 3, 1933, in its Docket 19610, *Switching Rates in the Chicago Switching District*, 195. I.C.C. 89, and to enjoin and restrain the defendants, other than the United States of America, from publishing, demanding, charging, collecting and/or receiving rates alleged to be authorized by the said order of the Interstate Commerce Commission, or in any wise to alter, change, cancel or in any manner depart from the rates for switching service set forth in tariffs on file with the Illinois Commerce Commission for intrastate switching between points in the Chicago switching district in the state of Illinois, and/or on file with the Public Service Commission (of Indiana) for intrastate switching between points in the Chicago switching district in the state of Indiana, or to make any effort to modify or change said intrastate switching rates in order to comply with the requirements of the said order, and to set aside and hold for naught any and all acts of said defendants, or any of them, performed and done under or in alleged conformity with said order of the Interstate Commerce Commission dated July 3, 1933. The Interstate Commerce Commission, by intervening petition, was made a party defendant to said action. Answers were filed by

the United States of America, by the Interstate Commerce Commission, and by the thirty-seven railroad carrier defendants. Upon the issues thus joined a final hearing was had before a three-judge court, assembled by this court on the 13th day of October, 1933. The final order and decree of such three-judge court so assembled was rendered on the 8th day of November, 1933.

(D) Cases Believed to Sustain Jurisdiction.

The following decisions of the Supreme Court of the United States are believed to sustain jurisdiction of this appeal:

Merchants Warehouse Co. v. *United States*, 283 U. S. 503, 75 L. Ed. 1227.

Virginian Railway Co. v. *United States*, 272 U. S. 658, 71 L. Ed. 463.

Beaumont, Sour Lake & Western Railroad Co. v. *United States*, 282 U. S. 92, 75 L. Ed. 221.

New England Divisions Case, 261 U. S. 184, 67 L. Ed. 605.

Louisville & N. R. Co. v. *United States*, 242 U. S. 60, 61 L. Ed. 152.

Interstate Commerce Commission v. *Union Pacific Ry. Co.*, 222 U. S. 541, 56 L. Ed. 308.

Florida East Coast R. Co. v. *United States*, 234 U. S. 167, 58 L. Ed. 1267.

Manufacturers R. Co. v. *United States*, 246 U. S. 457, 62 L. Ed. 831.

Skinner & E. Corp. v. *United States*, 249 U. S. 557, 63 L. Ed. 772.

Seaboard Airline R. Co. v. *United States*, 254 U. S. 57, 65 L. Ed. 129.

We respectfully submit that the Supreme Court of the United States has jurisdiction of this appeal by virtue of

Section 238 of the Judicial Code and chapter 32 of the 38th Statute, 220, of October 20, 1913, being sections 345 and 47 of Title 28, United States Code Annotated, respectively.

Respectfully submitted,

OTTO KERNER,
Attorney General of Illinois,
IRVIN ROOKS,
HARRY R. BOOTH,
Assistant Attorneys General of Illinois,
Solicitors for Illinois Commerce Commission.
PHILIP LUTZ, JR.,
Attorney General of Indiana,
HERBERT J. PATRICK,
Deputy Attorney General of Indiana,
Solicitors for Public Service Commission (of Indiana).
HERBERT J. CAMPBELL,
Solicitor for Board of Trade of the City of Chicago.
LUTHER M. WALTER,
Solicitor for Acme Steel Company.

FILE COPY

FILED
FEB 23 1934
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1933.

No. 787

ILLINOIS COMMERCE COMMISSION, *et al.*,
Appellants,

vs.

THE UNITED STATES OF AMERICA, *et al.*,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

MOTION TO ADVANCE

OTTO KERNER,
IRVIN ROOKS,
HARRY R. BOOTH,
PHILIP LUTZ, JR.,
HERBERT J. PATRICK,
HERBERT J. CAMPBELL,
LUTHER M. WALTER,
Solicitors for Appellants.

February 21, 1934.

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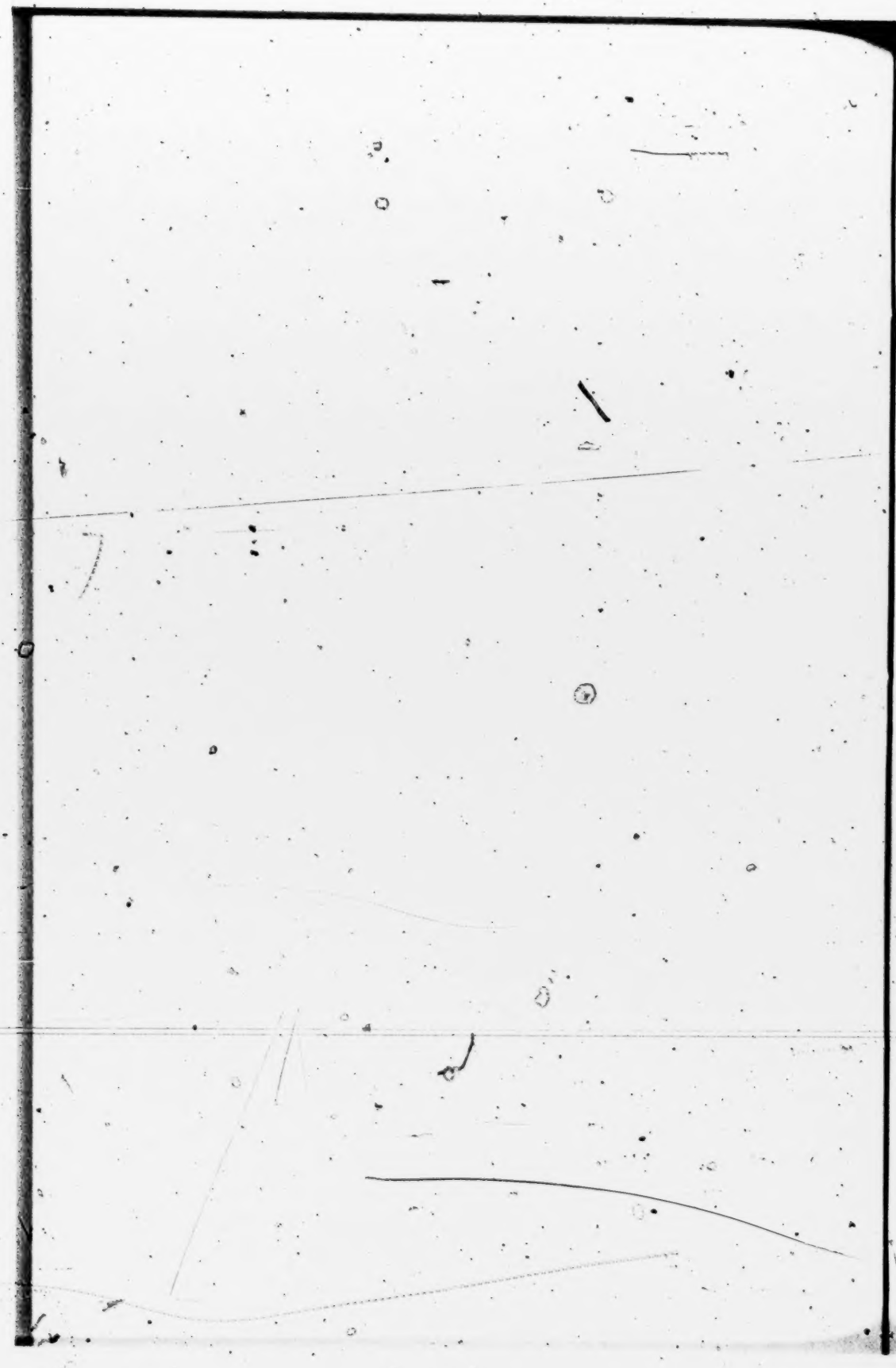

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1933.

No. 787

ILLINOIS COMMERCE COMMISSION, *et al.*,
Appellants,

vs.

THE UNITED STATES OF AMERICA, *et al.*,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

MOTION TO ADVANCE

Come now appellants, by their counsel, and respectfully move the court to advance this case for argument on an early day of the present term of this court after March 31, 1934, and in support of said motion show:

This is a suit by the Illinois Commerce Commission, the Public Service Commission (of Indiana) and Acme Steel Company, a shipper, to set aside the order of the Interstate Commerce Commission, dated July 3, 1933, entered in a proceeding before that Commission, entitled "Switching Rates in Chicago Switching District," 195 I. C. C. 89. By said order the Interstate Commerce Commission required rates and charges for intrastate switching of loaded cars in the Chicago switching district within the State of Illinois and within the State of Indiana to be not less than the rates contemporaneously applied on interstate switching of loaded cars between points in the Chicago switching district in Indiana and in Illinois.

A hearing was had before the District Court of the United States for the Eastern Division of the Northern District of Illinois, composed of Anderson, circuit judge, and Wilkerson and Barnes, district judges, and that court dismissed the bill of complaint.

Whether the Interstate Commerce Commission had the authority to make the order is the principal question involved in the case. The order of the Commission complained of deprives the Illinois Commerce Commission and the Public Service Commission of Indiana of any authority over intrastate rates applied by the railroad defendants to the movement of cars in switching service within their respective jurisdictions. The determination of the questions involved is of importance not only to the appellants but to the defendant rail carriers and the shippers they serve.

By Act of Congress of October 22, 1913 (Title 28, Section 47a, U. S. C. A.) priority in hearing and determination over all other causes except criminal causes is provided for appeals in this court of cases brought to enjoin, annul and set aside an order of the Interstate Commerce Commission.

We are authorized by counsel for all appellees to say that they concur in this motion to advance.

Respectfully submitted,

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IRVIN ROOKS,
HARRY R. BOOTH,
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Solicitors for Illinois Commerce Commission.
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HERBERT J. CAMPBELL,
Solicitor for Board of Trade of the City of Chicago.
LUTHER M. WALTER,
Solicitor for Acme Steel Company.

February 21, 1934.

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BRIEF FOR APPELLANTS.

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April 7, 1934.

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BRIEF FOR APPELLANTS.

Nature of the case and the proceedings below.

This is an appeal from a decree of the District Court of the United States, specially constituted pursuant to the provisions of the Urgent Deficiencies Appropriation Act of October-22, 1913, 38 Stat. at L. 208, 219, 220, Chap. 32, Judicial Code, § 238, U. S. C. A. Title 28, § 345, dismissing the bill of complaint filed October 4, 1933, by the Illinois Commerce Commission, Public Service Commission (of Indiana), the Board of Trade of the City of Chicago and Acme Steel Company, in which it was sought to enjoin, set aside, annul, suspend and restrain the enforcement, operation and execution of the order of the Interstate Commerce Commis-

sion, hereinafter referred to as the Commission, entered July 3, 1933, in its Docket 19610, *Switching Rates in the Chicago Switching District*, 195 I. C. C. 89, and to enjoin and restrain the railroad defendants from publishing, charging and collecting rates in alleged compliance with said order and from in any manner changing the rates for intrastate switching between points in the Chicago switching district in the State of Illinois, and in the State of Indiana.

The order complained of (R., 168a) was ostensibly entered by the Commission under the authority conferred upon it by section 13(4) of the Interstate Commerce Act (U. S. C. A. Title 49, section 13), and, after two extensions of its effective date, became effective on November 20, 1933. That order required the respondent carriers "according as they participate in the transportation" to establish and maintain switching rates and charges on an all-commodity basis for switching service in intrastate commerce in the Chicago switching district within the States of Illinois and Indiana which should not be less than the rates contemporaneously applied by "said carriers" to the transportation "by them" of all commodities in interstate switching service between points in the Chicago switching district in the states of Illinois and Indiana. The intrastate switching rates then in effect were 2.5 cents per hundred pounds, minimum 60,000 pounds, when the services of no more than two switching carriers were required, that is, for a one or two-line haul, and 3 cents per hundred pounds, the same minimum, when more than two switching carriers participated in the haul. The interstate rates then in effect on all commodities except railway equipment on its own wheels by approval of the Commission given in *Switching Rates in the Chicago Switching District*, 177 I. C. C. 669, were 3 cents per hundred pounds for a one-line haul, 3.5 cents per

hundred pounds for a two-line haul, and 4 cents per hundred pounds for a three-or-more-line haul. For convenience the report last cited will be hereinafter referred to as the *First Report* and the report (195 I. C. C. 89) on which is predicated the order complained of will be referred to as the *Second Report.*

The appellants were parties to the case before the Commission.

The entire transcript of oral testimony, together with all exhibits, constituting the entire record before the Commission, are offered in evidence in support of the allegations of the bill of complaint.*

The District Court, by final decree, dismissed the bill of complaint. (R., 1316.) The findings of fact and conclusions of law of the lower court appear in the printed record at pages 1307 to 1316, but have not been reported.

Jurisdiction.

Paragraph 1 of Rule 12 has been complied with and this Court entered an order on March 5, 1934, that probable jurisdiction had been shown.

Statement of the case.

The Commission's two reports (R., 33-84 and 137-168b) are the sources of the statements of fact herein made, except as to such facts which it is believed are there inaccurately stated or as to which the reports are silent.

---

* Figures following "R." refer to the page of the printed record in this Court; figures following "Tr." refer to the page of the record before the Commission which is there reduced to narrative form.

Proceedings before the Commission leading up to the First Report.

Prior to August 1, 1911, the rates, charges and practices of the carriers covering switching services within the Chicago switching district were in a chaotic condition. Individual tariffs were then published by each carrier naming rates local to its line and based upon its own local conditions. No joint rates were in effect. During 1910 a joint committee was organized, composed of shippers and carriers, with the object of establishing some uniformity in the local switching rates. After many conferences various differences were harmonized and an agreement was entered into, known as the Lowrey agreement (May 2, 1910—R., 533; Tr., 285), which was translated into an all-commodity tariff (hereinafter referred to as the Lowrey tariff) effective August 1, 1911, establishing uniform individual and joint rates on all commodities except coal, coke and grain. At the time of the commencement of these proceedings before the Interstate Commerce Commission, the then effective all-commodity rates in the Lowrey tariff were 2.5 cents for 1-line and 2-line hauls and 3 cents for 3-or-more-line hauls. (R., 40.)

The present proceedings grew out of the Commission's decision in *Jones & Laughlin Steel Corp.* v. *B. & O. R. R. Co.*, 96 I. C. C. 682, decided April 15, 1925, wherein the Commission prescribed a distance scale of reasonable maximum rates on iron and steel articles in carloads from the Pittsburgh group to St. Louis, Missouri, and to certain destinations in Illinois and Indiana, and found the rates on the same articles from points in Illinois and Indiana to the same destinations to be unduly preferential. Subsequently, the carriers attempted to realign the rates on iron and steel articles in Illinois Freight Association Ter-

ritory to conform with the scale of rates prescribed in *Jones & Laughlin Steel Corp.* v. *B. & O. R. R., supra.* The rates proposed were filed to become effective April 25, 1926, but were suspended by the Commission. Thereafter the carriers filed tariffs to become effective April 30, 1927, and on later dates, naming rates of 3, 3.5 and 4 cents to supersede the effective rates of 2.5, 2.5 and 3 cents, respectively, for 1-line, 2-line and 3-or-more-line hauls, for application within the district, such rates to apply not only on iron and steel articles, but on commodities generally except grain, grain screenings, and railway equipment on own wheels, and except livestock via the B. & O. Chicago Terminal Railroad, and similar rates to apply on the same commodities between points in the district on the one hand and Chicago Heights on the other, and to and from points adjacent to the district on carload traffic on which Chicago rates apply. These rates were suspended in *I. & S. Docket 2900, Switching Rates Between Points in Chicago and Chicago Heights Districts.* (R., 36, 38.)

Thereupon (on May 11, 1927—R,. 9), the Commission, on its own motion entered upon the proceeding, known as Docket 19610, of inquiry and investigation into and concerning the lawfulness of all rates and charges for switching within the Chicago switching district of all carload traffic moving in interstate commerce and their relationship to like rates and charges for switching in intrastate commerce, with a view to prescribing such reasonable, proper, non-discriminatory, non-prejudicial, and otherwise lawful switching rates for said traffic as the facts and circumstances might appear to warrant. I. & S. Docket 2900 was consolidated with Docket 19610. (R., 36-38.)

At the time the carriers filed the interstate schedules suspended in I. & S. Docket 2900, they also filed with the Illinois Commerce Commission similar schedules applicable

on intrastate traffic within the State of Illinois, and similar schedules with the Public Service Commission of Indiana, applicable on intrastate traffic within the State of Indiana, which said schedules were suspended by both the Illinois and Indiana Commissions. (R., 12, 13.)

Illinois Commerce Commission Dockets 17513, 17250 and 17269, and Public Service Commission of Indiana Cause No. 8939, involving these suspended intrastate rates, were heard with the general investigation. (R., 39.)

The only rates, however, in issue before either the Indiana or Illinois Commissions were those named in tariffs filed with them and by them suspended.

The only issue before the Illinois Commerce Commission was the question of the reasonableness of the proposed Lowrey rates, as stated in the tariffs which were suspended by the Illinois Commission. No general investigation of rates was instituted by the Illinois Commission, and during the pendency of these proceedings no petition was filed invoking the judgment of the Illinois Commission on any other of the switching rates in the Chicago district. (R., 332, 1091; Tr., 2844.) The same situation was true with respect to the Indiana Commission. (R., 1118; Tr., 2931.)

By order dated May 25, 1927, the Interstate Commerce Commission, in Docket 19610, required the carriers to submit at a hearing to be held in Chicago in November, 1927, a statement or statements showing the cost of switching carload traffic within the Chicago switching district, and pursuant to this order the defendant railroads made the cost study (R., 475; Tr., 107-108) of which more will be said later.

At the conclusion of extensive hearings, the Commission entered its findings and order on July 31, 1931, in the *First*

Report. (R., 33 to 84.) In that *First Report* the carriers were authorized to increase their interstate switching rates effective November 10, 1931, (the effective date later extended to December 10, 1931), to 3, 3.5 and 4 cents per hundred pounds for 1, 2 and 3-or-more-line hauls, respectively, all rates being subject to a minimum of 60,000 pounds per carload, which said rates the Commission in its finding stated would not be unreasonable for future application on all of the commodities switched within the district except railway equipment on its own wheels. (R., 76.)

On August 26, 1931, the Illinois Commerce Commission entered its order in Dockets 17250, 17269 and 17513, dismissing the complaints and canceling the suspended Lowrey tariffs (R., 335-340), and in its findings said (R., 333):

> "The burden of proving that the increased charges proposed are just, reasonable and lawful is upon the respondent carriers. Carriers depend upon the cost study as their sole justification for the proposed increases in switching rates. The record is entirely lacking in traffic evidence upon which the Commission could find that the proposed rates are justified."

and also made the following specific findings (R., 334):

> "The Commission having considered the evidence both oral and documentary and statements of counsel and being fully advised in the premises is of the opinion and finds:
>
> (1) That the traffic included in the cost study moving over certain railroads selected by the carriers is not representative of the intra-district traffic as a whole;
>
> (2) That even approximate costs of handling the study cars cannot be determined from the present record;
>
> (3) That the record is entirely silent as to the costs of handling the 'other' cars not included in the study;
>
> (4) That the record does not contain sufficient evidence to determine the proper amount to be allowed for taxes and return on investment;

(5) That the proposed changes in rates involved in these proceedings have not been justified."

On August 26, 1931, the Public Service Commission of Indiana made an order requiring the carriers to permanently cancel said schedules under suspension before it and made findings identical with those of the Illinois Commerce Commission. (R., 414-416.)

Proceedings before the Commission in connection with the Second Report.

Thereafter, on September 10, 1931, the carriers filed a motion with the Interstate Commerce Commission for an order requiring them to establish on intrastate traffic the same rates as the increased rates which had been approved for interstate traffic. That motion was denied. (R., 9-10, 433.)

On November 2, 1931, the Commission reopened Docket 19610 for further hearing, with respect to the relation of rates and charges for switching in intrastate commerce and the rates prescribed for like switching in interstate commerce, for the purpose of determining whether the adjustment between the intrastate and interstate rates was unduly prejudicial (1) to interstate shippers and traffic, and unjustly preferential of intrastate shippers and traffic, or (2) unjustly discriminatory against interstate commerce in violation of section 13 of the Interstate Commerce Act, with a view to the entry of such order as might be necessary to correct any violation of law that might be found to exist. (R., 139.) That order did not provide for the receipt of evidence as to the reasonableness of the rates involved or as to the propriety of predicating the rates to be prescribed on a cost study based on 1927 costs as applied to 1926 traffic. Consequently, the appellants, prior to the further hearing, filed with the Commission identical mo-

tions under dates of January 28, February 3 and February 18, 1932, asking that the Commission require the respondent carriers to conduct a new and representative cost study, under the supervision of the Commission, for the purpose of determining 1932 costs. It was alleged as ground therefor that evidence as to 1927 costs as applied to 1926 traffic did not provide a representative showing as to present-day costs. By stipulation filed with the Clerk of this Court a certified copy of one of these motions and the stipulation are printed as "Appendix B" to this brief. All three of these motions were denied February 8 and March 14, 1932.

On December 28, 1931, complaint was filed with the Commission, Docket 24950, by the Acme Steel Company and 57 other shippers and receivers of freight switched between points within the Chicago switching district, alleging that the interstate switching rates which became effective on December 10, 1931, were unjust and unreasonable. The carriers moved for the dismissal of this complaint without a hearing. That motion was denied and the two cases, *i. e.*, the reopened Docket 19610 and the formal Docket 24950, were set for hearing before Examiners Faul and Wilbur at Chicago. While the records in the two cases were separately kept, it was stipulated that any material or relevant testimony of record in either case should be considered as part of the record in the other case. (R., 139.)

Separate briefs were filed in each case but a single proposed report (R., 85 to 135) was issued by Examiners Faul and Wilbur of the Commission, recommending that the Commission find that no unjust discrimination against interstate shippers or localities and no undue preference of intrastate shippers or localities was shown, and that no unjust discrimination against interstate commerce had been shown. These two Examiners personally heard all the tes-

timony in the proceeding, and therefore the recommendation which they made is entitled to great weight. Their joint proposed report also recommended dismissal of the complaint against the interstate rates. (R., 135.)

Exceptions were filed to the proposed report and the cases were orally argued. On July 3, 1933, the Commission issued its *Second Report* and order (195 I. C. C. 89) (R., 137 to 168b) sustaining the proposed report of the Examiners, in so far as lack of discrimination and preference as between individuals and localities is concerned, but finding unjust discrimination against interstate commerce was occasioned by reason of the difference in rates. The decision of the Commission was not unanimous; Chairman Farrell and Commissioner Aitchison dissented on the ground that the difference between the intrastate rates and the interstate rates was justified by the difference in service performed in intrastate commerce and in interstate commerce. (R., 167.)

A joint petition was filed with the Interstate Commerce Commission on August 15, 1933, by appellants herein seeking a reopening for further hearing, for the setting aside of the order of July 3, 1933, and for reargument and/or reconsideration. Appendix D to the bill is a copy of that petition. (R., 169 to 236.) In that petition it was alleged in some detail that the conditions surrounding the handling of switching traffic in the District had substantially changed in the seven years which had elapsed since the cars were transported which served as a basis for the cost study. On September 9, 1933, the Commission postponed the effective date of its order from September 20, 1933, to October 20, 1933, during which period of time the Commission considered the petition for reopening and a petition for suspension of the tariffs. Both petitions were denied on October 4, 1933.

What now follows consists of a summary of the evidence before the Commission which is material in considering the points made in the argument.

EVIDENCE CONSIDERED IN THE *FIRST REPORT* BEARING UPON THE REASONABLENESS OF RATES.

The carriers' cost study.

As appears from the *First Report* of the Commission (R., 33-84), the only evidence presented by the carriers directed to the reasonableness of the increased rates proposed was a cost study which the Commission described at some length. (R., 41-56.)

The facts shown by, or relating to, that cost study and the evidence introduced in connection therewith which are material in the consideration of the questions involved in this case are as follows:

The Commission states that there are 35 railroads operating in the Chicago switching district in Illinois and Indiana. (R., 39.) An inspection of the maps of the switching district made a part of the record shows the extent of the district as it is defined in the *First Report*. (R., 76.) For the convenience of the Court we have reproduced as an Appendix hereto Exhibit 25, which is one of the maps referred to.

The railroads which were parties to the case before the Commission ranged from short, exclusively switching roads, such as the Illinois Northern; the Chicago & Calumet River; Chicago, West Pullman & Southern; and Pullman Railroad, each of which are but a few miles in length, to the Chicago, Milwaukee, St. Paul & Pacific; Pennsylvania; Chicago & North Western; New York Central; Chicago, Rock Island & Pacific, and Atchison, Topeka & Santa Fe, each of which are several thousand miles in length. The

territory embraced by the Commission's decision is, as the Commission found in its first decision (R., 39), approximately 40 miles in length and from 7 to 15 miles wide, comprising some 600 square miles.

Of the 35 railroads operating within the Chicago switching district, only the following eight perform any one-line interstate switching service (Ex. 6):

Baltimore & Ohio Chicago Terminal Railroad,
Chicago & Erie Railroad,
Elgin, Joliet & Eastern Railroad,
Indiana Harbor Belt Railroad,
Michigan Central Railroad,
New York Central Railroad,
New York, Chicago & St. Louis Railroad,
Pennsylvania Railroad.

None of the following 20 railroads operates in any portion of the Chicago switching district outside of the State of Illinois (Ex., 6):

Alton Railroad,
Atchison, Topeka & Santa Fe Railroad,
Belt Railway of Chicago,
Chicago & Calumet River Railroad,
Chicago & Illinois Western Railroad,
Chicago & North Western Railway,
Chicago, Aurora & Elgin Railroad,
Chicago, Burlington & Quincy Railroad,
Chicago Great Western Railroad,
Chicago Junction Railway,
Chicago, Milwaukee, St. Paul & Pacific Railroad,
Chicago River & Indiana Railroad,
Chicago, Rock Island & Pacific Railroad,
Chicago Short Line Railway,
Chicago, West Pullman & Southern Railroad,
Illinois Central Railroad,
Illinois Northern Railway,
Manufacturers Junction Railway,
Minneapolis, St. Paul & Sault Ste. Marie Railway,
Pullman Railroad,

while the following 7 railroads have mileage in both Illinois and Indiana in the Chicago switching district (Ex., 6):

Baltimore & Ohio Railroad,
Chesapeake & Ohio Railroad,
Chicago & Eastern Illinois,
Chicago & Western Indiana,
Chicago, South Shore & South Bend Railroad,
Grand Trunk Western,
Wabash Railway,

None of them publishes any 1-line interstate switching rates or performs any 1-line interstate switching service, that service being performed by a subsidiary company owned either wholly or in part by an affiliated company or by a lessee company, all of which operating companies are included in the eight railroads first above named.

Of the 35 railroads above named, only 8 publish interstate 1-line switching rates and engage in 1-line interstate switching service. There is no 2-line interstate switching service performed jointly by any two of the twenty carriers named in the second list of carriers, nor is there any 3-line interstate movement performed jointly by any three or more of the twenty carriers named in the second list. There are 1-line intrastate Illinois, 2-line intrastate Illinois and 3-line intrastate Illinois switching rates and movements over the lines of all the twenty carriers named in the second list.

As a starting point for their cost study the carriers within the district in the month of September, 1926, accumulated data as to the origin and destination of 42,666 cars handled in both state and interstate commerce within the district in switching service. A summary of the statistics accumulated for these cars as divided into 69 commodity groups, as divided into 1, 2 and 3-line hauls, and as further divided between state and interstate traffic is shown in Exhibit 11-A. This exhibit shows the number of miles each group of cars was transported, and on it are based computations

subsequently shown herein as to the average lengths of haul.

No statistics were accumulated by the carriers as to the actual cost of handling the cars embraced in this analysis, which is heretofore referred to as the 1926 traffic count.

Subsequently, in 1927, only 15 out of the 35 carriers within the district made a study as to the switching costs incurred in the handling of traffic for a single week, the 15 carriers embraced in this study, as named by the Commission, being the following (R., 41):

Trunk Lines.

Chicago, Burlington & Quincy Railroad,
Chicago & North Western Railway,
Chicago, Milwaukee, St. Paul & Pacific Railroad,
Chicago, Rock Island & Pacific Railway,
Elgin, Joliet & Eastern Railway,
Illinois Central Railroad,
Pennsylvania Railroad.

Switching and Terminal Companies.

Baltimore & Ohio Chicago Terminal Railroad,
Belt Railway of Chicago,
Indiana Harbor Belt Railroad,
Chicago & Illinois Western Railroad,
Chicago Short Line Railway,
Chicago, West Pullman & Southern Railroad,
Illinois Northern Railway,
Pullman Railroad.

The Commission at no time directed that any particular carrier be included in the cost study (R., 802; Tr., 1385), but it did deny the request of counsel for shippers that certain carriers be included in the study; Commissioner Campbell at the first hearing advised the carriers that it was their responsibility to make a representative study.

For various carriers the single week in which this study

was made ranged from the third week in June to the third week in October, 1927.

As described by the Commission, the method of this cost study was as follows (R., 41-2):

> "The study covers carload movements only, and segregates the expenses incurred thereon into three general classes, namely, clerical, switching, and car detention or maintenance. Taxes and return on investment are provided for by the employment of an estimated ratio, referred to as an operating ratio and used as a divisor to expand the determined costs so as to embrace those elements.
>
> *Clerical.* This expense represents the cost incurred to prepare records at the point of origin and destination. It embraces the direct expense as well as an apportioned amount of superintendence, maintenance, and general expenses. The total clerical cost at each terminal is reduced to a unit cost per consignment which is assigned to each car moving in or out of the respective terminal.
>
> *Switching.* This expense, concisely, is the cost of all services required in the physical movement of a car, inclusive of an apportioned amount of superintendence, maintenance, traffic, and general expense. The total switching expense is reduced to an engine-hour basis and ultimately to the cost per unit of production, the denominator being the number of cars handled in an hour by an engine while performing a distinctive part of the whole movement. These distinctive parts make up the switching service as a whole, and are designated 'elements of service.' All cars moving over a certain route normally receive the same elements of service peculiar to that route. The total cost per car of all elements of service embraced in a given route are combined under an index number. The respective index cost is then assigned to each car moving over the same route.
>
> *Car detention.* This expense embraces the maintenance of freight-train cars inclusive of an apportioned amount of superintendence, maintenance, and general expenses. The total car-detention expense is reduced

to the cost per serviceable-car day, which is applied to each car for every day that it is in switching service.

Operating ratio. The cost study formula uses an operating ratio of 66.67 per cent, which approximates the ratio of 67.4 said by the carirers to be necessary for the railroads of the country to earn 5.75 per cent upon their investments as a whole. The carriers herein contend for a ratio lower than 66.67 per cent, whereas the shippers contend for a higher ratio.

While the above formula has been the basis of cost studies presented in previous switching cases, its application in these proceedings apparently is the most elaborate and comprehensive to date. The study was extended to each one of the 69 commodity classes for one, two, and three line hauls segregated between interstate, intrastate Illinois, and intrastate Indiana. The test periods within which the unit costs were determined were confined to one week on each of the 15 roads during June, August, and October, 1927. The unit costs so determined were then applied to 26,166 cars, or 61.33 per cent of those embraced in the traffic analysis as of September, 1926, this number having moved wholly over the study roads during that month. These cars are hereinafter referred to as study cars in contradistinction to those not included in the study, and which are designated as nonstudy cars."

The elements of cost computed in accordance with the foregoing, of which the details are shown in Exhibits 1 to 8, inclusive; and 90 and 91, were stated as averages and were assumed to attach to both state and interstate traffic. No attempt was made to determine either direct or indirect costs on the cars handled during the study weeks in interstate commerce separately from those which attached to the cars handled in intrastate commerce. In fact, cost figures were *not* computed for the completed movements of *any* of the cars which moved in the week of 1927 on which the cost figures were based. Rather, as the Commission states, the elements of cost developed in 1927 were applied to a portion only of the cars embraced within the 1926 traffic count, the

cars to which such cost elements were applied being referred to as "study cars" and the remainder as "nonstudy cars."

The table on page 679 of the First Report (R., 43) shows the total number of cars in the 1926 traffic count as divided between study and non-study cars. From the data there shown we have constructed the following table in which, for Illinois intrastate, Indiana intrastate, and the interstate cars separately considered, is shown the proportion which the study cars and non-study cars were of the total of each separate class of traffic:

	Number of Cars			Percent of Total	
	Study	Non-Study	Total	Study	Non-Study
One-Line Hauls.					
Intrastate Illinois	1,951	7,017	8,968	22	78
Intrastate Indiana	2,426	134	2,560	95	5
Interstate	7,573	595	8,168	93	7
Total	11,950	7,746	19,696	60	40
Two-Line Hauls.					
Intrastate Illinois	5,853	4,257	10,110	58	42
Intrastate Indiana	158	11	169	94	6
Interstate	5,472	1,958	7,430	74	26
Total	11,483	6,226	17,709	65	35
Three-Line Hauls.					
Intrastate Illinois	1,930	1,735	3,665	53	47
Intrastate Indiana	....	....	....	..	..
Interstate	803	793	1,596	50	50
Total	2,733	2,528	5,261	52	48

COMPOSITE—1-, 2- AND 3-LINE HAULS.

Intrastate Illinois	9,734	13,009	22,743	43	57
Intrastate Indiana	2,584	145	2,729	95	5
Interstate	13,848	3,346	17,194	81	19
Total	26,166	16,500	42,666	61	39

By applying the 1927 cost elements to the study cars as separated between 1-, 2- and 3-line hauls, aggregate costs were secured which, when divided by the weight of the tonnage embraced within the study cars as divided between 1, 2 and 3-line hauls, resulted in an average claimed cost per hundred pounds.

The table on page 682 of the *First Report* (R., 46) shows that by the method just described the carriers computed claimed costs, including taxes and return on investment, per hundred pounds as follows: 2.90 cents for 1-line hauls; 3.56 cents for 2-line hauls, and 4.30 cents for 3-line hauls. As stated, these were the average costs claimed on the combined state and interstate cars included within the study. A table on page 679 of the *First Report* (R., 43) shows separately for intrastate and interstate traffic as well as separately for 1-, 2- and 3-line hauls, the per cent of the 1926 traffic count cars which were included within the study.

The protesting shippers before the Commission raised numerous objections to the formula of the cost study and the data on which it was based, a limited number of which were commented upon by the Commission in its *First Report.*

One criticism was as to the inflation of average costs which resulted from the application of higher elements of service costs, developed on movements of relatively low volume during the test period, to similar movements of greater vol-

ume during September, 1926. Since the costs developed under the heading "Switching Costs" are based on an engine-hour cost which is then reduced to a per car basis by dividing by the number of cars handled per hour, the volume of traffic is of controlling importance.

That the traffic conditions in the 1927 week, in which the cost figures were compiled, were not the same as in September, 1926, which was the month in which the cars moved to which the cost data was applied, is illustrated by the following: For industrial switching at the Albert Schwill plant the cost was based on the handling of four loaded cars in the week ending October 25, 1927. That cost was applied to 85 cars which were actually handled in September, 1926, at an average of approximately 20 per week. (R., 495; Tr., 176.) Cost Element No. 346 for the Indiana Harbor Belt was based on nine cars handled during the test week in August, 1927, and the cost was applied to 133 cars moving in 1926 at the average rate of approximately 30 per week. There are numerous illustrations of this situation. (R., 495; Tr., 177.)

Another criticism related to the inflation of cost elements shown for the industry switching at the plants of the various shippers. The engine-hour costs computed by the carriers included, among other things, the costs of maintaining the carriers' property and general expenses, and these costs were allocated to the services performed in proportion to time required to perform each element of service. (Ex. 5.) Page 41 of Exhibit 13 shows that 40 per cent of the total switching costs is for industry switching and like elements of service, all of which are performed on property and tracks at the shippers' plants. Most of such property and tracks is owned and maintained by the shippers themselves. (R., 494; Tr., 175.) Examples of very substantial invest-

ments in and costs of maintaining track facilities are shown for the Youngstown Sheet & Tube Company (R., 549; Tr., 346), the By-Products Coke Company (R. 559-60; Tr. 389; R. 1275, Tr. 212), the Corn Products Refining Company (R., 661; Tr., 843), the Standard Oil Company (R., 1215; Tr., 18), the Inland Steel Company (R., 1224; Tr., 45), the Acme Steel Company (R., 1271; Tr., 198), and the Illinois Brick Company (R., 1282; Tr., 237).

In the light of the above facts the method of the cost study resulted in bringing into total costs, through the channel of engine hour costs as applied to industrial switching, an alleged maintenance cost when no maintenance cost was in fact being incurred.

Another criticism of the cost study relates to the matter of car detention, by which is meant the cost to the carrier of repairing and maintainng cars used in switching service.

In the *First Report* the Commission described the method by which costs were determined for the furnishing of cars used in switching service (R., 46-7) as follows:

> "As to car detention which embraces the combined expenses of car repairs, depreciation, and retirements, the parties admitted that there has been no precise or even satisfactory basis yet developed for allocating that expense to particular services.
>
> The car-maintenance expenses are not segregated in the carriers' accounts between road service and yard service, and there are no means of arriving at the amount of these expenses chargeable to a particular service, such as that here involved except upon the basis of an estimate. The carriers' method of estimating these expenses, which rests upon definitely ascertainable facts, is to divide the total amount of the car-maintenance expenses on the entire road during the year by the total serviceable-car days of the cars in all services, to obtain an average car-maintenance expense per serviceable-

car day, which is then applied to the number of days the cars are detained in intradistrict switching service, as the basis for arriving at the amount of the maintenance expense chargeable to the cars in that service. This is a strictly time factor."

The cost per car day for detention was 64.352 cents. (R., 48.)

Exhibit No. 3 shows the method by which this per car day cost was arrived at. In the first place, it is based solely upon system costs for the year 1926 of the following nine trunk line carriers:

Chicago and North Western
Chicago, Milwaukee, St. Paul & Pacific
Chicago, Burlington & Quincy
Chicago, Rock Island & Pacific
Baltimore & Ohio
New York Central
Pennsylvania
Elgin, Joliet & Eastern
Illinois Central

From the annual reports of these nine trunk lines it was determined that in the aggregate there were 309,947,015 serviceable freight car days for which the carriers had expended in repairs, depreciation, retirements and certain overhead items, $199,457,002, thus producing an average of 64.352 cents per serviceable car day. Repairs alone averaged 45.352 cents per serviceable car day and depreciation averaged 11.866 cents per day. (Ex. 3.)

Two of the nine trunk line roads were not included in the cost study. No figures were obtained for car detention costs on any of the eight exclusively switching roads embraced in the cost study.

Page 45 of Exhibit No. 13 shows the average detention of cars was 1-line hauls 6.60 days; 2-line hauls 7.55 days; 3-line 8.70 days, resulting respectively at the rate of 64.352

cents per car per day in $4.24, $4.86 and $5.60 as the cost for each haul shown for car detention.

No allowance whatever was made for demurrage charged and collected from the shipper for delay in loading and unloading cars in switching service beyond the free time allowed for such loading or unloading. Exhibit 97 shows that the average car haul under load for the 1-line movements, study and non-study roads, was 10.53 miles; for the 2-line movements was 21.12 miles, and for the 3-line hauls was 26.01 miles; allowing an equal haul for the empty car to be returned over the entire length of the loaded distance would produce a total movement loaded and empty 1-line of 21.06 miles; 2-line 42.24 miles, and 3-line 52.02 miles. (Exs. 3 and 120.) Based on the average number of days of car detention the average number of miles that these cars moved per day were, 3 miles for 1-line hauls; 5.5 miles for 2-line hauls, and 6 miles for 3-line hauls. The average car mileage per day for the 9 trunk line roads used in computing the per car per day car detention cost in 1926 was 32 miles. (Exs. 3 and 120.) Thus, under the method used by the carriers which prorated costs entirely on a *time* basis, we find the same cost per car day is charged for switching 3 miles on a single line as is charged for the system use in all service of the 9 roads for 32 miles.

Mr. E. F. Rummell testified for the carriers that damage to freight train cars occurs in all services. More cars are damaged in classification service than in transfer service, but most of the smaller damages occur in classification yards. (R., 890; Tr., 1677.) In the movement from an outer yard to a downtown yard in the Chicago switching district the air is coupled up, and that is practically the same sort of movement as a road-haul movement and the resulting damage to the cars in that movement is practically the same as in a road-haul movement. (R., 890-1; Tr., 1679.)

The Commission found in *Switching at Little Rock,* 140 I. C. C. 583, page 586-7:

> "The car-maintenance costs included in the study embraced only the repair costs occasioned by damage to the cars while being switched in the terminal, as the cars themselves were furnished by the connecting lines. They were determined in the following manner: The extent of damage to cars from switching in the terminal was based on inspection of the cars when they came into and went out of the terminal, and the cost of making the necessary repairs was based on the American Railway Association rules and rates; the total cost thus found, $11,871.04, was divided by the total of car-detention days in the terminal, 51,541, resulting in an average car-maintenance cost per car-day of $0.230323, which was applied to the number of days the cars spent in the terminal in each class of switching service, and the resulting amount divided by the number of loaded cars involved in that service to arrive at the average cost per car.
>
> * * * * * *
>
> This method of arriving at the car-maintenance charge is unsound in principle, inasmuch as the repairs are not necessarily the result of the length of time the car spends in the terminal but of the damage done to the car while being switched. Ordinarily the principal damage to a car in the terminal is in classification service, but in this case no charge was made against that service for car maintenance, presumably because the amount of time involved was small."

The Commission in the instant case, notwithstanding its previous holding that the method of determining damage to cars on the *time* basis was unsound in principle, and that repairs are not necessarily the result of the length of time the cars spend in the terminal, but of the damage done to a car while being switched, and that ordinarily the principal damage to a car in the terminal is in classification service, accepted the *time basis alone* in the instant case. Certainly the more equitable way of approximating the average car

repairs would have been by dividing the total cost of such repairs in the Chicago switching district due to service in the district by the total number of cars handled, thus giving the average cost per car loaded or empty. The method followed in the instant case of taking the system average of the nine trunk lines, with their thousands of miles of operation, and ignoring the experience of the roads exclusively operating in the Chicago switching district cannot be accepted as any evidence of cost on which to determine the reasonableness of rates.

Another criticism related to the operating ratio used by the carriers for the purpose of bringing the costs resulting from the study up to a point which it was claimed would reflect an amount sufficient to provide for a return on investment and for taxes. In order to obtain the total costs hereinbefore mentioned, as shown on page 682 of the Commission's *First Report* (R., 46), it was necessary for the carriers to apply an operating ratio of 66.67 per cent. The evidence of the carriers as to the propriety of using that operating ratio was based on an average for all railroad systems in the United States. (R., 1104; Tr., 2889.)

Obviously the switching service performed within the Chicago switching district is an infinitesimal amount of the whole traffic handled by the trunk lines operating in and out of Chicago. There are, however, within the district a number of carriers who are engaged exclusively in switching service within that district, these including the cost study roads above named under the heading "Switching and terminal companies."

Items 15 and 16 of page 24 of Exhibit 120 show that, for the railroads in the district engaged exclusively in switching service, the average net railway operating income for the seven years ending December 31, 1931, produced a re-

turn of 7.89 per cent. (R., 1254; Tr., 139.) This indicates that, for the roads engaged exclusively in switching service, rates as in effect prior to any of the increases produced more than a "fair return." As to the operating ratio claimed by the carriers the Commission on page 685 of its *First Report* (R., 49-50) found:

> "The evidence is far from convincing in regard to the operating ratio required to expand the operating costs so as to embrace taxes and return on investment. The carriers' study is vague in this respect. They fail to name any definite figure which would bear a distinct relationship to the carriers and the particular traffic under consideration."

And again on page 691 (R., 55):

> "The record herein contains no convincing evidence as to what may be a proper operating ratio for this intradistrict traffic."

In the tables on pages 688 and 690 of the *First Report* (R., 52 and 54), the Commission purports to compare the average costs developed by the carriers with the average revenue yielded by the rates then in effect. The table on page 688 indicates, however, that the average revenue was computed not for the cars embraced within the study but for the study and nonstudy cars combined.

The effect of this was to show a lower revenue than if like had been compared with like, that is, if revenue on study cars had been compared with costs on study cars, since, as is shown by Exhibit 97, the existing rates produced an average revenue of 52 cents per ton (2.6 cents per hundred pounds) on the study cars and only 26 cents per ton (1.3 cents per hundred pounds) for the nonstudy cars. The result of combining study with nonstudy cars is to show a present revenue of 42 cents per ton (2.1 cents per hundred pounds). When it comes to costs however, the Commission confined itself exclusively to the study cars.

Based on revenues so determined, reduced by the exclusion therefrom of the high revenue movements on the false assumption that those represented the E. J. & E. and that the E. J. & E. costs were no different from the average costs, the table on page 690 of the *First Report* (R. 54) would show that for 1-line hauls the ratio of operating expense to weighted average revenue, which is the operating ratio, was 93.14 per cent, and as to this the Commission finds, (R. 54):

> "It is quite evident from the high ratios of operating expenses to the revenues that the present rates are too low."

There is not, however, in the record, any evidence that the operating expense on the non-study cars (which were included within this comparison on the revenue side) is the same as the operating expense of the study cars which alone was used in determining the operating expense with which the revenues were compared.

This matter is covered in detail in the testimony of Witness Tholin on behalf of the Illinois Commerce Commission. (R., 1105-8; Tr., 2892-8.)

A further criticism of the study that the traffic handled by the 15 roads embraced within the study was not representative of the average traffic for the district as a whole.

Among the roads included in the study was the Elgin, Joliet & Eastern. In the September, 1926, traffic count there were included a total of 19,696 cars handled for a 1-line haul, of which, however, only 11,950 were study cars to which cost elements were applied. (R. 43.) Of this latter number 7,093 cars were handled by the E. J. & E., of which 6,854, or 57 per cent of the total 1-line cars in the study, actually moved outside of the district, leaving only 239 E. J. & E. cars wholly within the district. (R., 1099; Tr., 2873-

4.) As contrasted with the fact just stated, the Chicago Junction Railroad was not included within the cost study. The traffic count of September, 1926, showed, however, that there were 1,788 1-line hauls wholly within the district on that carrier and that the Chicago Junction handled a greater number of cars in 1-line hauls than any carrier other than the Elgin, Joliet & Eastern and the Indiana Harbor Belt. (Ex. 13.)

While the Chicago Junction cars were excluded, the carriers did include the Chicago, Burlington & Quincy, although only 30 cars moved in a 1-line haul, and the Chicago and North Western, although only 40 cars moved in a 1-line haul. (R., 1094; Tr., 2869.)

Exhibit 97 shows that for both 1-, 2- and 3-line hauls the average distance transported of the study cars was in excess of the average distance of the nonstudy cars. The greatest disparity is shown on page 1 in connection with the 1-line hauls, where it is shown that the average distance of haul for the study cars was 13.19 miles and for the cars embraced within the traffic count, but excluded from the cost study, was 6.45 miles.

These and numerous other criticisms of the cost study shown of record were sufficient to convince the Illinois and Indiana Commissions that the carriers had failed to justify the proposed increases on intrastate traffic. The Interstate Commerce Commission itself, at page 705 of its *First Report* (R., 69) said:

> "We can not, however, accept the cost study as a definite yardstick by which alone to measure the reasonableness of the rates under consideration, but in addition must apply other tests to determine their reasonableness."

Comparison with other rates.

The evidence offered in support of the reasonableness of the proposed increased rates being confined exclusively to the cost study, the record itself afforded no other basis for a finding as to the reasonableness of the rates assailed. Therefore the Commission was forced to go out of the record and the extent to which it did so is indicated by the following excerpts from the *First Report* which follow immediately after the sentence last above quoted (R., 69-70):

"In *Switching at St. Louis and East St. Louis, supra.* division 3, at page 220, we said: 'A cost study is ordinarily little more than a very rough indication, and, even if unusually comprehensive and exact, it should not be the sole basis for fixing rates.' The hauls involved range from a minimum of 0.1 mile to a maximum of 61.1 miles, with one haul shown to be 89.54 miles. The average hauls for all intradistrict switching are 10.8 miles for 1-line, 21.6 miles for 2-line, 24.5 miles for 3-line, and 18 miles for one, two and three line hauls, combined. These hauls although made with a switch engine are of such great average lengths as to suggest that they are, in effect, line hauls, and except for the fact that they are performed wholly within a district of such unusual size as the Chicago switching district they would be subject to the usual line-haul rates for such distances. In view of this, and the fact that the record contains no evidence to indicate that it costs less to handle traffic by switch engine than by road engine for road hauls of similar distances, it will be enlightening to compare the rates under suspension with line-haul rates prescribed for low-grade commodities for similar average loads and distances.

In the *Southwestern Brick Cases*, 107 I. C. C. 681, we prescribed a distance scale of maximum reasonable carload rates on brick and related articles for application in the Southwest, the single-line scale commencing with a rate of 4.5 cents for hauls of 10 miles and under, with 1 cent added for joint-line hauls.

In No. 17000, Part 11, *Sand, Gravel, Crushed Stone and Shells*, 155 I. C. C. 247, we prescribed a distance

scale of rates for application on sand, gravel, crushed stone, etc., in straight or mixed carloads, between points in Arkansas, Louisiana, and Texas, and western Louisiana. For 10 miles and under rates of 2.5 cents for single-line and 3.25 cents for joint-line hauls were prescribed. Somewhat higher rates were found reasonable for application between points in Arkansas, Oklahoma, and Texas and east-bank crossings in Louisiana.

In No. 17000, Part 6, the *Iron and Steel Investigation*, 155 I. C. C. 517, the scale of rates prescribed for application throughout official territory on a large list of iron and steel articles commenced with 6 cents for 5 miles and under, and for the 15 to 20 mile block, representing the average hauls within the Chicago district, a rate of 8 cents was prescribed. This, and numerous other similar comparisons which could be shown, covering rates prescribed on various low-grade commodities for short hauls, indicates that the rates under suspension are considerably lower than the rates prescribed by us for similar distances in line-haul movements."

There is no evidence in the record which even touches upon such cases or upon the question of whether or not the circumstances and conditions surrounding the transportation to which are applied the line-haul rates prescribed by the Commission in the cases cited in the above excerpt from the *First Report*, are similar or comparable to the circumstances and conditions surrounding the traffic, either intrastate or interstate, handled on switching rates within the district. Although the Commission stated that "the record contains no evidence to indicate that it costs less to handle traffic by switch engine than by road engine for road hauls of similar distances" the fact is that there is substantial evidence of record on the point that switching service is not comparable with road haul service.

F. E. Webster, general freight agent of the Chicago & Eastern Illinois Railroad and in its traffic department over

twenty years, testified (R., 579; Tr., 481) that commercially, road-haul rates cannot be related to switching rates, nor can switching rates be related to road-haul rates.

R. I. Pierce, secretary and traffic manager of the Manufacturers Association of Chicago Heights, and engaged in railroad, industrial and commercial work for the past 21 years, testified (R., 589; Tr., 530-6) that the distinction between line-haul movement and a strictly switching movement, is that the latter is a general movement of cars under switching rates made by a switching or terminal crew, under the jurisdiction of a yard master, which is not true as to a road-haul movement.

F. H. Rutherford, Superintendent of Chicago terminals for the Chicago & Eastern Illinois Railroad, and having been in charge of terminal work for about 20 years, testified that a road-haul movement for a short point involves a lack of tonnage from the time the car is set out to the destination of the train. A road-haul crew moves from one terminal to another. A switching crew always goes back to its own terminal. "It never gets very far away." His distinction between switching and road-haul service is that in the switching service the crew starts out and performs its work and comes back to the starting point, while in road-haul services the crew goes to the nearest division point, stops, and perhaps comes back the next day. Stating it another way, switching services can only extend so far that the crew may start out, go to their limit and still have time to get back to the starting point within their eight hour trip. (R., 591; Tr., 546-549.)

Road-haul crews handle switching at the smaller stations under switching rates that may apply as between two industries at that station, or something of that sort. Such switching is usually handled with the local road-haul crew and is quite a different service from the through train

service. There are two classes of road-haul crews; one is the local crew, with districts usually short, running from 40 to 75 miles, paid by the day or by the hour. Through road-haul train crews are paid by the mile and their business is to haul trains from one terminal to the other, usually not less than 100 miles apart. These crews do but a limited amount of switching. Requirements of the labor unions prevent these crews from doing local switching. The local road-haul crews, which are in fact the switching crews, with terminals at two different places, do that sort of switching. (R., 592; Tr., 552-5.)

R. E. Riley, traffic director of the Chicago Brick Company and the Lake Sand Corporation, and engaged in railroad and industrial traffic service since 1897, (R., 710; Tr., 1009), testified that line-haul rates should not even be remotely associated with rates in the Chicago switching district. (R., 714; Tr., 1021.)

R. C. Davidson, general freight agent for the Chicago, Rock Island & Pacific Railway Company at Chicago (R., 819; Tr., 1445) testified in response to a question by Examiner Faul (R., 820; Tr., 1448) that while an answer should be based upon a cost study, which he had not made, it would be more expensive to handle a road-haul shipment from points outside the district than between points within the district, and even so rates should be related to the rates within the district, but from outside points rates should be somewhat higher than from points within the district, that rates within the district should not be less than 5 cents under, nor more than 5 cents under, the rates from outside points. (R., 820; Tr., 1448.)

Although the carriers at the first hearing presented no comparisons of switching rates within the district with line-haul rates, numerous comparisons of that nature were presented by the shippers who participated in the hearing. Such

comparisons were with lower line-haul rates maintained by the carriers in the territory immediately adjacent to the Chicago switching district and are covered by Exhibits Numbers: 18 (R., 548; Tr., 340), 39 (R., 597; Tr., 575), 45 (R., 604; Tr., 600), 46 (R., 606; Tr., 614), 47 (R., 606; Tr., 615), 48 (R., 606; Tr., 616), 49 (R., 620; Tr., 664), 76 (R., 744; Tr., 1158), 77 (R., 745; Tr., 1161), 78 (R., 745; Tr., 1162), and 79 (R., 745; Tr., 1163), and No. 3 (R., 1263; Tr., 165) in Docket 24950.

While no exhibits involving comparisons of switching rates in other districts were introduced by the carriers, such exhibits were introduced by the shippers and included at the first hearings, Exhibits No. 56 (R., 658; Tr., 829) and 89 (R., 821; Tr., 1452). In addition, evidence from shippers was received orally as to switching rates in other districts, as is indicated at (R., 858, Tr., 1573-4; R., 1225, Tr., 46-7; R., 1235-37, Tr., 80-89; R., 1300, Tr., 330), etc.

The grain switching rates.

The Board of Trade of the City of Chicago, on behalf of its members, appeared at the hearings before the Interstate Commerce Commission, introduced evidence, and filed separate briefs setting forth the special situation surrounding the grain switching movement in Chicago, which differed from that of commodities generally as evidenced by the fact that continuously from the signing of the Lowrey agreement (May 2, 1910) until the order of the Commission herein assailed, grain had always been excepted from the all-commodity basis in the Lowrey agreement. (R., 40, 534, 676; Tr., 286, 900.)

The Board of Trade of the City of Chicago contends that there is no substantial evidence in the record to support a finding justifying any increases in the grain switch-

ing rates and that the Commission misconceived the issue as to the grain rates. (*Post*, page 148.)

Prior to the Commission's order there were no joint rates on grain switching within the Chicago switching district. Each individual railroad published its own rates in its own tariff (R., 679; Tr., 906), and the switching rates of the different railroads were not uniform in amount, but varied in amount as to each railroad and as to the character of services performed by each railroad, viz., whether the service was inbound from a connecting line of railroad to an elevator or mill, or outbound from an elevator or mill to a connecting line of railroad. (R., 676, 680 and 821; Tr., 900, 910, 911 and 1453.)

At the time the hearing commenced, the switching charges via nearly all of the trunk lines to elevators from connections with other lines were $4.95 per car. Practically all the belt lines made the same charge per car inbound, though there were exceptions. The Chicago & Alton rate was $6.00; the Chicago & Northwestern rate to Rockwell Elevator was $6.75; the New York Central rate was $3.60. From elevators to connecting lines, the rates varied more than they did inbound. Most road haul carriers charged $4.95, except the Chicago & Alton, which charged $6.00, the Burlington $6.75, and switching lines like the Chicago River & Indiana and the Belt Railroad, $6.75. Indiana Harbor Belt charges 2 cents per hundred pounds, which is an exception to the general rule, but it does very little business. In addition to these connecting line switching rates, there were intermediate switching rates frequently paid on grain. The Belt Railway's loaded car charge was $5.40; the Chicago, Burlington & Quincy and Indiana Harbor Belt likewise charged $5.40, while the Pullman Railroad charges were $4.00. (R., 679-680; Tr., 909-911.)

Single line grain switching rates will vary from $4.95 to

$6.30, $8.10, and up to $9.90 per car, and with other railroads a 2-cent rate per hundred pounds. (R., 680; Tr., 911.)

From the beginning, grain switching charges in Chicago have differed from those on other traffic. Those differences existed when the Lowrey agreement was made, and the existence of lower switching rates on grain than on other commodities was not changed by the Lowrey agreement. (R., 692; Tr., 942.)

At the commencement of the hearing in Docket 19610 (January 11, 1928) the railroads did not propose to increase the grain switching rates. (R., 56, 477, 693; Tr., 115-116.) No witness appeared for any railroad in justification of any increase in any individual line grain switching rate, and Witness Galligan testified that wherever there was any proposal to change any existing switching rate or to change the territory to affect switching rates, it was embraced either in his testimony or in the testimony of Mr. Saur, or in the exhibits. (R., 477; Tr., 116.)

Grain switching rates at other grain markets are variable, just as at Chicago, and the switching rates at Chicago are reasonable in comparison with the rates at these other markets. The Chicago market is in competition with these other grain markets, and any investigation of grain switching rates at Chicago should be accompanied by investigations of similar character at the other markets. (R., 821-824; Tr., 1452-1460.) These comparisons also show that the rates at the other markets are not based on cost. It is an economic factor to make switching rates on grain as low as possible, and there is a difference in the conditions surrounding the movement of grain compared with commodities generally. (R., 841; Tr., 1512.) Crosstown or industry switching at other large grain markets and mill-

ing centers exactly similar to crosstown switching in Chicago is absorbed. (R., 677; Tr., 903.) All of the grain elevators in the Chicago switching district are located in Illinois, except that of the New York Central and the Standard Elevator, which are located in Indiana. (R., 683.)

As to the switching of grain, it is not a case of one car at a time, but the movement of a good many at a time, not only crosstown, but road haul mixed in with it, and one illustration was cited of a movement of 446 cars of corn in drags of 65 to 70 cars. (R., 685; Tr., 921.)

The cost study was not evidence to justify increases in the grain switching rates, because, as heretofore stated, the cost study was ordered by the Commission on May 25, 1927, and the first hearing in this proceeding was held January 11, 1928, and at the beginning of the hearing the carriers did not propose any increases in the grain switching rates. In fact, Witness Galligan stated that the cost study and the exhibits filed in connection therewith were considered by the carriers as justifying the rates which they had published and filed (R., 477; Tr., 115) and which were under suspension, and grain was not included in the suspended tariffs.

The Commission itself said that it could not accept the cost study as a definite yardstick by which alone to measure the reasonableness of the rates under consideration. (R., 69.) Furthermore, at no time during the pendency of the proceedings before the Interstate Commerce Commission did any of the railroads file any tariffs naming increased switching rates on grain with either the Illinois or Indiana Commissions. (R., 332, 1091, 1118; Tr., 2844, 2931.)

EVIDENCE SHOWING LACK OF SIMILARITY BETWEEN INTRASTATE AND INTERSTATE COMMERCE.

The fact that the study costs made by the carriers did not deal with intrastate traffic separately from interstate traffic makes it impossible to make a comparison based on costs.

The data assembled in the traffic count of 1926, however, does provide a means by which we can compute separately for intrastate and interstate commerce the average length of haul.

For that portion of the cars embraced in the traffic count which were used in the cost study, the average lengths of haul are shown in the following table on page 115 of the *Second Report* (R., 163):

	Intrastate		Interstate	Per Cent Intrastate of Interstate	
Average Hauls	Illinois Miles	Indiana Miles	Miles	For Illinois	For Indiana
1 line	14.7	6.3	15.0	98.	42.
2 lines	15.9	7.3	27.5	58.	27.
3 lines	23.4	..	34.2	68.	..

As stated, these averages are based entirely on the study cars. Data as to number of cars and total car miles shown in Exhibit 97 permits us to compute similar averages for the cars embraced within the traffic count but excluded from the cost study as well as for the study and non-study cars combined. Such a computation shows as follows:

Average Hauls	Intrastate		Interstate	Per Cent Intrastate of Interstate	
	Illinois Miles	Indiana Miles	Miles	For Illinois	For Indiana
		Nonstudy Cars			
1 line	5.4	3.5	19.5	28.	18.
2 lines	15.6	5.4	31.9	49.	17.
3 lines	22.0	..	33.1	66.	..
		Study and Nonstudy Cars, Combined			
1 line	7.4	6.1	15.3	48.	40.
2 lines	15.8	7.2	28.7	55.	25.
3 lines	22.7	..	33.6	68.	..

The average distances stated in the last group reflect the average for all the cars embraced within the September, 1926, traffic count.

As illustrative of the difference in average distance of the traffic of individual shippers, the average haul intrastate in Indiana on sulphuric acid of the Grasselli Chemical Company was four miles (R., 1049; Tr., 2624), while the *shortest* interstate haul on sulphuric acid for the same company exceeds 25 miles (R., 1052; Tr., 2634). For crushed stone handled in 1-line service, the average haul intrastate in Illinois was 13.64 miles and interstate was 27.18 miles (R., 1129; Tr., 2968).

For all shipments of crushed stone the average haul of intrastate shipments was 18.9 miles and of interstate shipments 33.8 miles (R., 599; Tr., 580).

Although the switching costs claimed are developed on a time basis, there is no evidence of record from which we can determine the average time consumed in the average intrastate haul and compare it with the average time consumed in the average interstate haul.

The order of the Commission complained of is directed to all commodities. The evidence shows, however, that there are conspicuous differences between the kinds of commodities which move in interstate commerce in a particular service, such as 1-, 2-, or 3-line, and the kinds of commodities which move in intrastate commerce.

The division of the cars contained in the September, 1926, traffic count by commodities is shown in Exhibit No. 120, as taken from Exhibit 11-A. It is there shown that in 1-line service there moved in Illinois intrastate commerce 84 cars of wheat, with no cars moving interstate. Other commodities showing the same condition include hay, straw, alfalfa, other fresh vegetables, other products of agriculture, fresh meats, packing house products, eggs, butter, cheese, wool, hides and leather, anthracite coal, salt, other products of mines, logs, posts, poles, other products of forest, vegetable oils, automobiles, trucks, paper and books and canned goods. Conversely the same exhibit shows that in September, 1926, there was a 1-line movement interstate of beverages, but no 1-line movement intrastate in Illinois.

As to 2-line traffic, Exhibit 120 also shows that the following commodities moved in Illinois intrastate 2-line traffic with no cars shown as moving in 2-line interstate commerce: Hay; cottonseed products, excluding oil; "other fresh fruits"; potatoes; "other fresh vegetables"; dried fruits; sheep and goats; poultry; eggs, butter and cheese; wool, hides and leather; logs, posts and poles; ties; lime and plaster; automobiles and trucks; furniture; paper and books; and textiles. Conversely there was a 2-line movement interstate of household goods, but no such movement intrastate 2-line in Illinois. As to 3-line traffic, Exhibit 120 shows that the following commodities moved Illinois intrastate 3-line but that no cars of such commodities moved 3-line interstate: wheat, other grain; flour and meal; "other

fresh fruits"; "other products of agriculture"; eggs; "other animal products"; bituminous coal, coke, salt, ties; "other products of the forest"; vegetable oils; sugar and syrup; automobiles and trucks; household goods; fertilizers; and canned goods. There were 299 cars of cement that moved in 3-line interstate commerce with no such 3-line intrastate Illinois movement of cement.

EVIDENCE PURPORTING TO SHOW UNJUST DISCRIMINATION IN FACT AGAINST INTERSTATE COMMERCE.

The evidence received from the carriers at the further hearing purporting to show the revenue burden which resulted from rates on intrastate switching traffic somewhat lower in cents per hundredpounds than those contemporaneously maintained on interstate switching traffic, is shown in the record as follows: Exhibit 99, being a restatement of Exhibit 11-A (R., 944; Tr., 2158-9), which in turn covered the cars included within the traffic count of September, 1926, shows that, if the traffic for the month of September, 1926, be considered as the equivalent of one-twelfth of the entire year, the difference in gross revenue which would have resulted from applying the present basis of interstate rates to the intrastate traffic moving in that month in lieu of the existing intrastate rates would have amounted to $1,927,725§ in Illinois and $117,322§ in Indiana, a total of $2,045,000. (R., 945; Tr., 2161.) This difference in gross revenue is referred to as an "estimated annual loss." (R., 945; Tr., 2161.)

Exhibit 101 (R., 946; Tr., 2163) is a similar arithmetical calculation applied to the traffic moving in the week of November 9 to 15, 1931. On the result of that calculation, expanded to the basis of a year, the carriers compute the net

§ This exhibit as corrected is 99-A and gives these figures as $2,683,981 and $94,244.

annual loss at $947,639† on Illinois intrastate and $69,953 on Indiana intrastate traffic, or a total of $1,017,600. (R., 946; Tr., 2164.)

Exhibit 103 (R., 947; Tr., 2166) is a similar arithmetical calculation applied to the traffic moving in the week of January 11 to 16, inclusive, 1932, which, similarly expanded, is relied upon by the carriers as showing an estimated net annual loss in Illinois intrastate traffic of $899,000* and on Indiana intrastate traffic of $82,500, a total of $981,600. (R., 947; Tr., 2166-7.) It will be observed that these studies constitute no more than the arithmetical application of increased rates to traffic moving on the rates in effect prior to the date of the order complained of. Elsewhere we refer to the evidence, or rather lack of evidence, from carrier witnesses which would support an estimate that the traffic would be the same under increased rates as under the rates required to be increased.

As to the assumption that all intrastate traffic would continue to move by rail if the rates were increased the Commission found (R., 165) "This is not a fair assumption."

The carriers also introduced Exhibit 105-A (R., 948; Tr., 2170-1) which compares in terms of the whole traffic within the Switching district the proportion which moved interstate in the week of November 9 to 15, 1931, which was prior to the increase in the interstate rates with the proportion which moved interstate in the week of January 11 to 17, inclusive, 1932, which was subsequent to that rate increase. The following table summarizes the showing in that exhibit:

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†This exhibit as corrected is 101-A and gives this figure as $941,416.

*This exhibit as corrected is 103-A and gives this figure as $902,711.

INTERSTATE AND INTRASTATE TRAFFIC FOR WEEK OF NOVEMBER 9 TO 15, 1931, COMPARED WITH TRAFFIC FOR WEEK OF JANUARY 11 TO 17, 1932, RATIOS OF EACH KIND TO THE WHOLE TRAFFIC BEING STATED IN PERCENTAGES.

Chicago Switching District Traffic.

Number of Lines in Haul	Illinois Intrastate		Indiana Intrastate		Total Intrastate		Interstate	
	Nov. 1931	Jan. 1932	Nov. 1931	Jan. 1932	Nov. 1931	Jan. 1932	Nov. 1931	Jan. 1932
1	18.07	13.43	16.15	17.81	34.22	31.24	65.78	68.76
2	44.10	49.08	0.70	1.89	44.80	50.97	55.20	49.03
3	63.85	82.15	....	....	63.85	82.15	36.15	17.85
Composite 1, 2 and 3 line hauls .	35.39	38.63	7.08	8.12	42.47	46.75	57.53	53.25

No evidence was introduced, however, for the purpose of showing that, as a matter of fact, the decrease in the proportion which moved interstate from 57.53 to 53.25 per cent and the corresponding increase in the proportion which moved intrastate from 42.47 to 46.75 per cent was due to increasing the interstate rates to a basis higher than applicable intrastate. The witness introducing the exhibit on cross-examination stated (R., 1021; Tr., 2485-6):

> "I have no information in my possession to give the Commission from which it could find that business that moved interstate had been lost to somebody intrastate by reason of this rate situation. In making this statement it is my understanding that that statement would apply to the carriers as a whole, and they are making no contention that the business of somebody interstate has been taken by somebody else intrastate, due to the change in rates; there must have been some of it, however. We make no contention as to that as a basis for setting aside the lawfully constituted rates of the State of Illinois and the State of Indiana."

In connection with the showing that in January, 1932, the interstate traffic got down to 53.25 per cent of the whole switching traffic, it is shown on page 679 of the *First Report* (R., 43) that at the time of the 1926 traffic count the interstate traffic constituted only 40.29 per cent of the whole.

The only other evidence from the carriers which purported to show the burden on interstate commerce is Exhibit 110. (R., 1023 and following; Tr., 2493 and following.) That exhibit deals with the routes followed by 856 cars which moved subsequent to the increase in the intrastate rates. All of these cars moved from a point in Illinois to a point in Illinois and, according to the carriers, while the normal route between these Illinois points prior to December 10, 1931, involved a movement across the state line and back again, subsequent to the date just stated, the actual route of movement was wholly intrastate. (R., 951-2; Tr., 2182.)

The findings of the Commission regarding this exhibit, as found on pages 112 and 113 of the *Second Report* (R., 160-161) read as follows:

> "Witnesses for the carriers further testified that many of the industries cannot ship to points within the district except over interstate routes and therefore must pay the interstate rates of 3, 3.5, and 4 cents for one, two, and three-or-more-line hauls, respectively, while the industries which have intrastate routes available may ship on the basis of 2.5 cents for 1-line and 2-line hauls, and 3 cents for 3-or-more-line hauls, in carloads minimum 60,000 pounds, and in some instances at lower rates, but usually with higher minima, because of the exceptions under the Lowrey rates applicable on intrastate traffic. One of respondents' exhibits shows the so-called natural or interstate, and the unnatural or intrastate routes. The witness stated that in order to develop economy and efficiency of service certain routes have been designated for the movement of cer-

tain types of traffic, and explained that the term 'unnatural route,' via which many industries have been routing their shipments since the December 10 increases, instead of permitting them to move via the natural interstate routes, was used because such movements take the cars against the flow of the traffic. In other words, movement over the intrastate routes in most instances requires special handling by the motive power because it is either partially or wholly in the opposite direction to the usual trend of the district traffic, which is governed by the preponderance of the traffic moving into or out of the district in connection with line hauls. This exhibit shows that during the period December 10, 1931, to March 31, 1932, 856 cars were specifically routed and moved over the lower rated intrastate routes which formerly would have moved over interstate routes, for which the respondents show an alleged loss in revenue of $7,656. The record discloses that in some instances these unnatural or intrastate routes are not only shorter but involve less service. On cross-examination it developed that a considerable haul, in several instances amounting to approximately 20 miles, in connection with the so-called natural or interstate routes, could be saved by the use of more advantageously located interchange connections. A number of such movements were pointed out, and in those cases what was the natural haul over an interstate route would become the shorter haul via an intrastate route, and would involve the most economical movement. The extent of the round-about or circuitous hauls in connection with some of the so-called natural routes is disclosed in two of the illustrations shown on the exhibit where the natural or interstate routes involved hauls of 38 and 45 miles, as compared with the unnatural or intrastate hauls of only 13 and 23 miles, respectively. In this connection attention is called to the statement made in the prior report where, at page 692, it is stated:

> 'The record leaves no doubt that there is need for improvement in the handling of this traffic switching business, and we cannot too strongly urge upon the carriers the necessity for prompt

> study of these conditions looking toward the elimination of unnecessarily circuitous hauls, the proper location of interchange points and classification yards, etc.'"

Evidence introduced in connection with this exhibit shows that with but three exceptions every one of the 856 cars involved handling by the Pennsylvania Railroad, and that the Pennsylvania handling required each car to move across the state line and back again because that railroad has a classification yard at Colehour located partly in Indiana immediately adjacent to the state line which is used for classifying cars handled to and from points on the Calumet River branch of the Pennsylvania, which is in Illinois paralleling the state line and immediately adjacent thereto. (R., 974-5; Tr., 2282-85.)

Furthermore, the witness who presented the exhibit admitted that he was without information as to whether a situation similar to that described for the Pennsylvania obtained on any one of the other 34 roads in the district, the witness stating (R., 1026; Tr., 2506):

> "Naturally every road varies according to its physical layout."

No evidence as to relative costs via the state and interstate routes used by the cars in Exhibit 110 was offered, the witness stating (R., 1025; Tr., 2501):

> "I could not tell you at the present time whether the movement via the red line (the intrastate route) is more expensive or more costly to the carriers than via the black route (interstate route)."

And again (R., 1025; Tr., 2503):

> "Aside from the movement of those particular cars via the particular routes, as shown on the map, I did not make any investigation as to costs, character of service, or anything of that kind."

In so far as relative cost is at least in part measured by relative length of haul, the following is shown as to representative movements covered by Exhibit 110: In illustrations C, D, E, G and H the distance via the intrastate route was shown as 3 miles shorter than the distance via the interstate route. Similar differences in favor of the intrastate route are shown to the extent of 6 miles in illustration J, 8 miles in illustration M, 25 miles in illustration N, and 22 miles in illustration O.

While the carriers, in connection with Exhibit 110, treated routes from a point in Illinois to a point in Illinois via the Colehour yard located on the state line, as an interstate move, the testimony offered by the carriers at the hearings preceding the *First Report,* shows that at that time the carriers treated such a route as an intrastate route. Witness Vivian testifying (R., 887-8; Tr., 1664-5):

> "I determined between state and interstate by the usual methods used by carriers in preparing intrastate and interstate statistics, and in that you follow the actual route of movement. (Tr., 1664.) If a yard is located on the State line, whether the movement in the yard would be state or interstate depends on where the car came from and will go to. If it went out of one end of the yard into the other state and then went back into the state of origin, then it be an interstate movement and that would be determined from the route the car followed. We have records available that would enable you to determine whether a car went in at one end of the yard and out at the other or whether out at the end at which it came in."

The foregoing is a complete summary of all evidence introduced at the hearing for the purpose of showing that the intrastate rates against which the order complained of were directed, imposes a burden in fact on interstate commerce.

EVIDENCE RELATING TO EFFECT ON CARRIERS' EARNINGS OF AN INCREASE IN THE INTRASTATE RATES.

The principal witness on behalf of the carriers in support of their request for a 13th section order was Statistician Vivian, of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company. If there is any affirmative evidence in this record as to the results on the earnings of the carriers from an increase in the intrastate rates, it is to be found in the testimony of this witness. The witness introduced Exhibits 99, 101 and 103 and the facts shown by those exhibits have been heretofore stated.

Mr. Vivian expressly stated that he did not know anything about whether the competition within the district by truck and by barge will take more business from the carriers, if rates be increased to the interstate basis, than under the present intrastate basis. (R., 1027; Tr., 2426.)

Exhibits presented by him showing the estimated loss in business to the carriers *assumed* that the carriers will have the business on the higher basis of rates. (The Commission's report (R., 165) states "This is not a fair assumption.") Mr. Vivian admitted that the carriers are losing business to the trucks all over the United States and insisted that there is no more danger to the carriers from truck competition in the Chicago district than there is in any place in the United States. (R., 1012; Tr., 2441.)

Revenue losses shown on the exhibits presented by him were *predicated on the assumption* that all of the present intrastate traffic would move on the increased rates. (R., 1030; Tr., 2521-5.)

Mr. Vivian admitted that he had no information as to any change in the flow of interstate traffic from rail lines to truck or water movements since the increased interstate rates became effective on December 10, 1931, and that he

had no information as to similar traffic changes intrastate subsequent to the Ex Parte 103 increases. (R., 1030; Tr., 2525.)

The following witnesses testified on behalf of the railroad defendants but not one of them gave any testimony as to the estimated revenue which would result from increasing intrastate rates to the interstate basis nor any testimony whatever that an increase in the intrastate rates would result in an increase in revenue:

George J. Shreeve, General Superintendent, Belt Railway of Chicago. (R., 956-965; Tr., 2190-2250.)

R. A. Barlow, Trainmaster, The Baltimore & Ohio Chicago Terminal Railroad. (R., 986-995; Tr., 2333-2374.)

F. A. Meyers, Operating Department, Indiana Harbor Belt Railway. (R., 995-1001; Tr., 2375-2400.)

C. L. Whiting, Superintendent of Terminals, Chicago, Milwaukee, St. Paul & Pacific R. R. Co. (R., 1001-3; Tr., 2404-9.)

J. L. Faulk, Division Superintendent, Chicago, Burlington & Quincy Railroad. (R., 1003-1006; Tr., 2411-2422.)

All of the witnesses just named dealt with operating matters and gave no testimony as to revenue under present or proposed rates.

Only two traffic men testified on behalf of the carriers. These were W. H. Ward, General Freight Agent of the Indiana Harbor Belt (R., 1068-1081; Tr.,1042-2772), and H. N. Jouver, General Freight Agent of the Baltimore and Ohio Chicago Terminal (R., 1081-6; Tr., 2774-2821).

Mr. Ward testified that he had made no investigation to determine whether increasing the rates on crushed stone to the interstate level within the district would have the effect of reducing or increasing revenues of the Indiana Harbor

Belt, and had formed no opinion on the matter. (R., 1076; Tr., 2743, 2744.)

Mr. Jouver made no investigation to determine whether the going into effect of the increased rates on crushed stone would increase revenue either for the Baltimore & Ohio Chicago Terminal or for carriers generally. (R., 1085; Tr., 2793.) Nor had he made any investigation to determine whether the 10 per cent increase in the intrastate switching rate had any effect on the movement of traffic in the switching district. (R., 1085; Tr., 2794-5.)

The foregoing evidence is all of the testimony of the traffic witnesses for the carriers which has any relation to the effect which would follow from increasing intrastate rates to the interstate basis, and affords no basis whatever for any finding that the revenue of the carriers would be increased as a result of increasing intrastate rates to the interstate basis. We come now to consider the testimony of the shippers.

Testimony was presented by representatives of the principal shippers within the district handling various commodities. Some of the important facts presented by them are as follows:

Standard Oil Company of Indiana:

This company refines petroleum and distributes its products. Assistant Traffic Manager Hollands (R., 1212-1219; Tr., 13-35) showed that as a result of the increase in interstate rates, effective December 10, 1931, all of the shipments to 8 stations in the Chicago switching district, which represented a movement of 3,907 cars by rail during 1931, had been diverted to truck. On these cars in 1931 the carriers earned $58,605. (R., 1215-16; Tr., 19-20, Ex. 1, Formal Complaint Case.)

The saving between truck costs and rail costs to the 8 stations on 3,907 cars, amounted to $36,776.46, which is an average of $9.41 per car. (R., 1215-16; Tr., 20.)

To 5 additional stations the company has a contract with a trucking company for services at a lower cost than that of handling by railroad, but at the time of the hearing had not moved any large volume by truck. (R., 1216; Tr., 20.) The Standard Oil Company during the railroad strike of 1920 used a tank boat and distributed therefrom throughout the city by truck. Mr. Hollands testified that there is no question but what the company can handle its business to plants in the Chicago switching district by water at very much less than the present rail rate. (R., 1216; Tr., 21.)

Moreover there is the possibility of the use of the pipe line now in place from the refinery at Whiting to some of the plants in the Indiana district. (R., 1217; Tr., 25.)

It is less trouble to handle by truck than to handle by railroad. (R., 1219; Tr., 32.)

Inland Steel Company:

Traffic Manager W. J. Hammond testified on behalf of that company (R., 1220-1231; Tr., 36-69):

This company manufactures iron and steel in all forms. In addition to the lower costs for movements of this company's traffic by truck than by rail, there are additional advantages in shipping by truck such as a saving in bracing, blocking, and wrapping costs and the much quicker delivery by truck; these advantages will dictate a movement will be by truck even at a transportation cost higher than by switching. The Inland Steel Company formerly handled none of its finished products by truck but subsequent to the increase in interstate rates on December 10, 1931, it has been compelled to use trucking service and during the

first three months of 1932 the Inland Steel Company handled to the Chicago switching district approximately 5,000,000 pounds of finished products by truck. (R., 1222-3; Tr., 41-2.)

Within three weeks prior to the hearing in May, 1932, the Inland Steel Company was notified by the largest purchaser of sheet steel in the switching district that it would accept no more carload deliveries, but that due to the low cost and improved service in handling, all movement must be by truck. (R., 1225; Tr., 42.)

Mr. Hammond stated that if the increased interstate rates were made effective on intrastate traffic the additional burden for switching would further divert to the trucks a large share of the present tonnage moving via rail and "give lower earnings to the railroads." (R., 1223; Tr., 44.)

Interlake Iron Corporation:

Mr. G. H. Staat, traffic manager, testified on behalf of this company (R., 1231-1240; Tr., 70-101):

If the 1-line rate on Illinois intrastate traffic be increased from the then existing rate of 40 cents to the interstate basis of 60 cents per ton, limestone instead of being received by rail would be received by vessel or by truck; flue dust, then being received by rail on a 2-line combination rate of $14.60 per car, would be handled by truck, if the rate be increased to the interstate basis of 70 cents per net ton. The truck cost is not more than 18 cents per net ton. (R., 1232-1235; Tr., 71-7.)

An increase in the rate on pig iron from 40 cents per gross ton, minimum 100,000 pounds, to 3 cents per hundred pounds, would result in a diversion to truck for the few city blocks involved in the movement or an extension of the plant tracks of the Interlake Iron Corporation into the

premises of the Republic plant and the performance of the movement by the company's own power, with resulting net loss to the rail carrier of at least $18 per car on every car so handled. During the three years last past the movement of pig iron had averaged 65,427.66 tons on which there would be a loss to the railroads annually of $26,171.06. (R., 1234; Tr., 76-7.)

From this company there is a daily movement of tar to the Barrett Company at 2.5 cents per hundred pounds; the interstate rate would be 4 cents. If the increase be made that tar will move by tank barge. (R., 1234; Tr., 77.)

The daily coke requirements of the company formerly moved via the Chicago Short Line and the Pennsylvania Railroads at 2.5 cents; that cost, to say nothing of the proposed increase, was too much of a burden for the furnaces to carry and by the substitution of trucks the cost was reduced from 2.5 cents to .9 cent per hundred pounds by truck. The monthly coke average from June 16, 1931, to April, 1932, was 10,530 tons, on which the rail carrier would have earned $5,265 per month. All of that revenue was lost by the rail carriers because even the 2.5 cent rate was too high. It follows that increasing the rate from 2.5 cents to 3 cents for 1-line and 3.5 cents for 2-line, cannot increase the rail revenue. (R., 1234-5; Tr., 78.)

Grasselli Chemical Company:

Testimony on behalf of this company was presented by J. W. Brown, its assistant traffic manager (R., 1046-1057; Tr., 2613-2652):

This company manufactures acid and other chemicals. In 1930 this company shipped from its plant at Grasselli, Indiana, to points in the Chicago switching district intrastate to Indiana destinations, 83,862,080 pounds of sulphuric acid

on a rate of 2 cents per hundred pounds in private cars, with no allowance for car hire. The rate was increased 10 per cent. If that rate be further increased to 3 cents per hundred pounds, a pipe line will be in operation within two weeks after the rate is advanced and what does not move by pipe line will be moved by truck. (R., 1047-1051; Tr., 2616, 2631.)

Trucking costs from Grasselli to Indiana Harbor are 31.5 cents per net ton and the pipe line cost to East Chicago is 36 cents per net ton. The inbound costs of trucking phosphate rock is less than 25 cents per net ton and that contract will be extended to cover trucking of coal, salt, and other commodities, if the rail rates be increased. (R., 1056; Tr., 2646-7.)

Consumers Company:

Testimony on behalf of this company was presented by W. J. Womer, Traffic Manager (R., 1126-1142; Tr., 2959-3020):

This company handles stone, sand, gravel, coal and similar commodities.

At the time of the hearing there were only two building construction jobs of any consequence then under way, and these were supplied with crushed stone wholly by truck: the new Post Office Building being erected over the tracks of the carriers on air rights, using approximately 50,000 tons, or 1,000 cars, and the new Field Building, half as much. Two or three years prior to the hearing virtually no stone was trucked from the quarries, but competition forced the installation of facilities for handling by truck from the quarries. Stone can be trucked cheaper than it can be moved by rail on the then intrastate rate. Increasing intrastate switching rates 10 per cent diverted some

stone shipments from rail to trucks. (R., 1133; Tr., 2979-81.)

Rates in effect at the time of the hearing are entirely too high, are more than crushed stone as a class of traffic will bear, and are forcing shippers to other forms of transportation. Since the hearings in the first case closed in 1928 a number of highways have been paved, some have been widened, trucks are more numerous and competition between trucks is keener. (R., 1140-1; Tr., 3010-12.)

While carriers have made efforts to establish line-haul rates that would meet truck competition on crushed stone, no such efforts have been made within the switching district. (R., 1141; Tr., 3012.)

To use the language of Mr. Womer, the establishment intrastate of the interstate rate basis of 3, 3.5 and 4 cents on crushed stone "is not going to help the railroads get a movement of crushed stone. That is going to help drive it away quicker than any one thing I know of." (R., 1141; Tr., 3013.)

Moulding Brownell Corporation:

E. L. Maynard, traffic manager, testified (R., 1284-1291; Tr., 247-286) in behalf of that company:

This company is engaged in the building material business, operating stone quarries, sand and gravel and brick plants, with 23 distributing yards located in all sections of Chicago. The company owns 80 trucks and also contracts for the use of trucks, the maximum cost of the hired service being 44 cents per ton, with a maximum haul of 17 miles. Quotations on any particular job are based on the cheapest transportation, whether by rail or by truck. (R., 1284-1286; Tr., 248-255.)

While there has been some movement of stone by rail

from Chicago switching district points to Indiana destinations in the switching district subsequent to the increase in freight rates, most of the stone is now moving by truck. (R., 1284-1286; Tr., 248, 255.)

This company has five boats which it operates on the lakes in handling sand, gravel and crushed stone. Competition by water transportation has been so serious that the Elgin, Joliet & Eastern eliminated the emergency charge on sand, gravel and crushed stone from producing points on its line to Gary and South Chicago. (R., 1299; Tr., 316, 317, 319.)

Dolese & Shepard Company:

Mr. O. P. Chamberlain, President, testified on behalf of that company (R., 1291-1298; Tr., 287-315):

This company is a wholesaler of crushed stone. There has been a tendency particularly in the past three years, to divert the handling of stone in the Chicago district from rail to truck, notwithstanding it is better business, everything else being equal, to load the stone on cars and move it by rail to its destination in the district. Conditions have forced the company to change its facilities and to add truck-loading facilities. During 1931, truck deliveries of stone from the company's quarries in the district amounted to 18.3 per cent of the total district deliveries and during the first four months of 1932 these increased to 31.2 per cent of the total. (R., 1292-3; Tr., 290-291.)

In September, 1931, prior to the increase in interstate rates, considerable stone was shipped to Whiting, Indiana Harbor and East Chicago, Indiana, but when the rate was increased from 2.5 cents to 3.5 cents for the 2-line haul, the business was lost by this company to a quarry nearer the Indiana line which made delivery by truck. Notwith-

standing Dolese & Shepard desire to continue the sale of stone in the Indiana portion of the switching district, it had no carload shipment during 1932 prior to the hearing; notwithstanding advantages in weighing and handling stone moved by cars, the company has been practically driven by conditions to the use of trucks. (R., 1294; Tr., 296-7.)

Acme Steel Company:

S. L. Felton, Traffic Manager, testified on behalf of this company (R., 1269-1272; Tr., 193-205):

This company manufactures and distributes steel of all kinds. 90 per cent of all single-line tonnage moving from its Riverdale plant to points in the Chicago switching district in single-line haul goes to the Archer Avenue plant of the company, an interplant service. The Archer Avenue plant would be dismantled and all the operations performed at the Riverdale plant, but for the fact that the Archer Avenue plant is the initial plant and held at a low overhead cost. Any substantial increase in the transportation cost from Archer Avenue to Riverdale, an intrastate movement, will hasten the discontinuance of operation at the Archer Avenue plant and consequently all that tonnage will be lost to the carriers. (R., 1271-2; Tr., 199.)

Youngstown Sheet & Tube Company:

H. H. Bascom, assistant traffic manager, testified on behalf of this company (R., 1273-1276; Tr., 207-218):

This company manufactures coke, iron, steel, pipe, etc. At the first hearing prediction was made that if any increase be made in rates then in effect on coal from the steel plant to the coke plant, or coke from the coke plant to the steel plant, arrangements would be made for a different method of transportation. Prior to any change in the rates

a conveyor was established which permitted handling of those materials at a lower cost than the switching rate. Pig iron can be moved from South Chicago plant to the Indiana Harbor plant at a rate not in excess of 2.5 cents per hundred pounds. (R., 1274; Tr., 211.)

International Paper Company:

Thomas E. Reilly, traffic manager, testified on behalf of this company (R., 1278-1280; Tr., 222-234):

This company handles paper of all kinds.

The present switching rate on paper for 3-line haul from Crooks Terminal Warehouse on the Chicago, Burlington & Quincy to a point on the Alton Railroad, is $15. The trucking charge is only $12 per car. The interstate rate for a 3-line haul is $21 per car. Paper is moved from the warehouse and from the mill to customers in the Chicago switching district by rail or by truck, whichever is the cheaper. (R., 1278-9; Tr., 222-5.)

The mill of the company in the Chicago district, is now closed down; if it resumes manufacture it will not use the railroads for movements to points in the Chicago switching district on the increased rates. (R., 1279; Tr., 225-6.)

Illinois Brick Company:

H. G. Brown, traffic manager, testified on behalf of this company (R., 1281-1284; Tr., 234-247):

This company manufactures brick at ten plants in the Chicago district, six of which are in the switching district. The total costs of all kinds on rail shipments of brick to the Post Office job was 65 cents per ton greater than by truck. (R., 1281-2; Tr., 236-7.)

The Barrett Company:

J. L. Roberts, traffic manager, testified on behalf of this company (R., 1143-1145; Tr., 3022-3030):

The Barrett Company produces paving tar principally, also roofing tar, creosote oil from crude coke tar received from the Interlake Iron Corporation and the Wisconsin Steel Company. For a number of years this crude tar was handled by tank barges but at the insistence of the rail companies the movement was changed to tank cars by rail. The Barrett Company has barge equipment and the installation of pipe line connection to and from the barge is a minor matter. If the 2.5 cent rate be increased to 3.5 cents, all the crude coke tar will be diverted from rail to barge. (R., 1143; Tr., 3022-3.)

The annual intrastate switching movement of crude tar to the Barrett plant is 80,000 tons. The present annual revenue to the rail carrier is $40,000; on the increased rate of 3.5 cents the revenue would be $56,000. In an effort to get $16,000 additional revenue, the carriers will lose their present $40,000 earnings. (R., 658; Tr., 826.)

In addition to the foregoing testimony of shippers, Mr. O. R. Livinghouse, for five years head of the Traffic Department of the Public Service Commission of Indiana, testified that transportation seeks that form that is least expensive; that if rail costs are increased "the transportation would probably seek other forms of transportation than to use rails." (R., 1122; Tr., 2944.)

There is no other testimony of record in the case bearing upon this question.

ASSIGNMENTS OF ERROR.

The following assignments of error are relied upon:

The Court erred (R., 1334-5):

1. In dismissing the bill of complaint.

2. In finding that the Interstate Commerce Commission's denial of plaintiffs' motions of January 28 and February 3, 1932, for a different cost study than that already made by the railroads did not constitute an abuse of discretion or denial of a full hearing.

3. In finding that the order of the Interstate Commerce Commission of July 3, 1933, is supported by sufficient evidence.

4. In finding that the order of the Interstate Commerce Commission of July 3, 1933, contains adequate findings of fact.

5. In finding that the order of the Interstate Commerce Commission of July 3, 1933, is sufficiently definite and certain.

6. In finding that the Interstate Commerce Commission had full power and authority to make its order of July 3, 1933, complained of.

7. In finding that the Interstate Commerce Commission's denial of plaintiffs' petition of August 17, 1933, for reopening for further hearing, for setting aside of the

order of July 3, 1933, for reargument and/or reconsideration, did not constitute an abuse of discretion or denial of a full hearing.

8. In finding that the order of the Interstate Commerce Commission of July 3, 1933, complained of herein is a valid and subsisting order of said Commission.

9. In denying plaintiffs' motion for an order staying the effective date of the order of the Interstate Commerce Commission of July 3, 1933, pending the appeal to the Supreme Court of the United States.

10. In failing to find the facts specially and to state separately its conclusions of law thereon as required by Equity Rule 70½.

11. In failing to enjoin, annul and set aside the order of the Interstate Commerce Commission of July 3, 1933.

Appellants abandon their ninth assignment of error which complained of the District Court's order of November 15, 1933, denying appellants' motion for stay of order of the Commission dated July 3, 1933, pending appeal to the Supreme Court, for the reason that the Court required the defendant carriers to preserve and account for all amounts received by them by virtue of said order of the Commission. (R., 1331.) All other assignments of error are insisted upon.

Statutes.

The pertinent provisions of the statutes are shown in Appendix A (*post*, page 165).

SUMMARY OF ARGUMENT.

I.

An order of the Commission must be enjoined (1) if the Commission misconceives its authority under the law, (2) if the parties have been denied a full and fair hearing, (3) if the order is not supported by the necessary subordinate findings, (4) if the order is indefinite and lacks precision, and (5) if the order and the findings on which it is predicated are not supported by substantial evidence properly presented and received. (pp. 66,67.)

United States v. *New York Central R. Co.*, 263 U. S. 603.

United States v. *Missouri Pacific R. Co.*, 278 U. S. 269.

Ann Arbor R. R. Co. v. *United States*, 281 U. S. 658.

Atchison, Topeka & Santa Fe Ry. Co. v. *United States*, 284 U. S. 248.

United States v. *Northern Pacific R. Co.*, 288 U. S. 490.

Florida v. *United States*, 282 U. S. 194.

I. C. C. v. *Northern Pacific R. Co.*, 216 U. S. 538.

Beaumont, S. L. & W. R. Co. v. *United States*, 282 U. S. 74.

Florida East Coast R. Co. v. *United States*, 234 U. S. 167.

I. C. C. v. *L. & N. R. Co.*, 227 U. S. 88.

Chicago Junction Case, 264 U. S. 258.

United States v. *Abilene & S. Ry. Co.*, 265 U. S. 274.

II.

The Commission failed to give effect to the provisions of Emergency Railroad Transportation Act, 1933, approved June 16, 1933. (pp. 67-72.)

Interstate Commerce Act, Section 15a, as amended June 16, 1933 (C. 91, Title 2, sec. 205, 48 Stat. 220). (See Appendix.)

Switching Rates in Chicago Switching District, 177 I. C. C. 669 (*First Report*) (R., 33).

Switching Rates in Chicago Switching District, 195 I. C. C. 89 (*Second Report*) (R., 137).

Florida v. *United States*, 282 U. S. 194.

Florida v. *United States*, No. 342, October Term, 1933, decided April 2, 1934.

III.

The order of the Commission is void because of an abuse of discretion by the Commission in denying motions of January 28, February 3 and February 18, 1932, for an order requiring the railroad respondents to conduct a cost study which would reflect conditions in 1932, and in denying the petition of August 15, 1933, for reopening, for further hearing, for reargument and/or reconsideration. The full hearing required by the Interstate Commerce Act was not had. (pp. 72-82.)

Interstate Commerce Act, Section 13(4) (49 U. S. C., Section 13(4)). (See Appendix.)

Atchison, Topeka & Santa Fe Ry. Co. et al. v. *United States*, 51 Fed. (2d) 510, 516.

Atchison, Topeka & Santa Fe Ry. Co. v. *United States*, 284 U. S. 248, 260, 262.

United States v. *Northern Pacific R. Co.*, 288 U. S. 490.

IV.

The order of the Commission is void because it is not supported by the necessary subordinate findings.

(a) THERE IS NO PROPER FINDING THAT THE INCREASED INTERSTATE RATES WOULD BE OR ARE REASONABLE *PER SE*. (pp. 83-86.):

Beaumont, S. L. & W. R. Co. v. *U. S.*, 282 U. S. 74, 86.

United States v. *Louisiana*, 78 L. Ed. Adv. Ops. 50.

(b) THERE IS NO FINDING THAT THE INTRASTATE TRAFFIC UPON WHICH THE RATES SUBJECT TO THE ORDER WERE ASSESSED IS OF A LIKE KIND AND SIMILAR TO THE INTERSTATE TRAFFIC IN RESPECT TO THE CONDITIONS UNDER WHICH THE SWITCHING SERVICE IS RENDERED. (pp. 86-89.)

Interstate Commerce Act, Sections 2, 3 and 13(4), (49 U. S. C. A., Secs. 2, 3 and 13(4)).

(c) THERE IS NO FINDING THAT AN INCREASE IN THE INTRASTATE RATES WILL PROVIDE ADDITIONAL INCOME FOR THE CARRIERS. (pp. 89-95.)

Florida v. *United States*, 282 U. S. 194.

Georgia Public Service Commission v. *A. C. L. R. R. Co.*, 146 I. C. C. 717.

Florida Fertilizer Case, 151 I. C. C. 602.

United States v. *Louisiana*, 78 L. Ed. Adv. Ops. 50, 56 (*Louisiana Surcharge Case*).

Florida v. *U. S.*, No. 342, October Term, 1933, decided April 2, 1934.

(d) THERE IS NO FINDING THAT THE INTRASTATE RATES AS IN EFFECT PRIOR TO THE ORDER OF THE COMMISSION WERE LESS THAN MAXIMUM REASONABLE RATES. (pp. 95-98.)

Virginia Corporation Commission v. *A. & R. R. R. Co.*, 136 I. C. C. 173, 180.

Georgia Public Service Commission v. *U. S.*, 283 U. S. 765, 770.

U. S. v. *Louisiana*, 78 L. Ed. Adv. Ops. 50, 56 (*Louisiana Surcharge Case*).

Fifteen Per Cent Case, 1931, 178 I. C. C. 539, 179 I. C. C. 215.

(e) THERE IS NO FINDING WHICH DEFINES WHAT INTERSTATE COMMERCE IS BEING DISCRIMINATED AGAINST OR IN WHAT MANNER THE ALLEGED UNJUST DISCRIMINATION OCCURS IN FACT. (pp. 98-100.)

(f) THERE IS NO FINDING WHICH SEPARATES THE INTRASTATE AND INTERSTATE PROPERTY, REVENUES AND EXPENSES OF THE CARRIERS SO AS TO MAKE IT POSSIBLE TO COMPARE REVENUE WITH COSTS FOR INTRASTATE SWITCHING TRAFFIC CONSIDERED SEPARATELY FROM INTERSTATE SWITCHING TRAFFIC. (pp. 100-102.)

Smith v. *Illinois Bell Telephone Co.*, 282 U. S. 133.

(g) THE EARLIER DECISIONS OF THIS COURT INVOLVING SECTION 13 (4) ORDERS ARE NOT SIMILAR IN THEIR FACTS TO THE INSTANT CASE. (pp. 102-105.)

Georgia Public Service Com'n. v. *U. S.*, 283 U. S. 765.

Alabama v. *U. S.*, 283 U. S. 776.

Louisiana Public Service Com'n. v. *T. & N. O. R. Co.*, 284 U. S. 125.

Wisconsin Railroad Commission v. *C. B. & Q. R. Co.*, 257 U. S. 563.

U. S. v. *Louisiana*, 78 L. Ed. Adv. Ops. 50, 56 (*Louisiana Surcharge Case*).

Florida v. *U. S.*, 282 U. S. 194.

V.

The order of the Commission is void because it is indefinite and lacks precision in respect to the carriers subjected to its terms. (pp. 105-107.)

Texas & Pacific Ry. Co. v. *U. S.*, 289 U. S. 627.

VI.

The order of the Commission is void because there was no evidence upon which the Commission could predicate findings which are necessary to support an order under Section 13(4) of the Act. (p. 108.)

Interstate Commerce Com'n. v. *L. & N. R. R. Co.*, 227 U. S. 88, 92.

(a) THERE IS NO EVIDENCE TO SUPPORT A FINDING THAT THE RATES APPROVED ON INTERSTATE SWITCHING TRAFFIC IN THE *FIRST REPORT* ARE JUST AND REASONABLE. (p. 109.)

(1) THE COST STUDY DOES NOT PROVIDE SUCH EVIDENCE AND STANDING ALONE, WAS IN FACT FOUND BY THE COMMISSION TO BE INSUFFICIENT. THAT FINDING OF INSUFFICIENCY WAS WELL JUSTIFIED BY DEMONSTRATED INFIRMITIES IN THE COST STUDY. (pp. 109-117.)

Switching Rates in Chicago Switching District, 177 I. C. C. 669.

Boston Wool Trade Asso. v. *Director General*, 69 I. C. C. 282, 298-9.

Switching at Little Rock, 140 I. C. C. 583, 584.

Florida East Coast R. Co. v. *U. S.*, 234 U. S. 167.

(2) THE COMPARISONS WITH LINE-HAUL RATES IN WIDELY REMOVED TERRITORIES WHICH THE COMMISSION USED AS AN ADDITIONAL TEST OF THE REASONABLENESS OF RATES WERE NOT IN EVIDENCE, NOR WERE THEY SUPPORTED BY EVIDENCE AS TO COMPARABILITY OF CONDITIONS. (pp. 118-122.)

U. S. v. *Abilene & S. R. Co.*, 265 U. S. 274, 288.

(b) THERE IS NO EVIDENCE TO SUPPORT A FINDING THAT THE INTRASTATE RATES SUBJECT TO THE ORDER UNJUSTLY DISCRIMINATED AGAINST INTERSTATE COMMERCE. (pp. 122-126.)

(c) THERE IS NO EVIDENCE WHICH SEPARATES THE INTRASTATE AND INTERSTATE PROPERTY, REVENUES AND EXPENSES OF THE CARRIERS SO AS TO MAKE IT POSSIBLE TO COMPARE REVENUE WITH COSTS FOR INTRASTATE SWITCHING TRAFFIC CONSIDERED SEPARATELY FROM INTERSTATE SWITCHING TRAFFIC. (pp. 126-127.)

Smith v. *Illinois Bell Telephone Co.*, *supra*.

(d) THERE IS NO EVIDENCE TO SUPPORT A FINDING THAT THE INTRASTATE TRAFFIC SUBJECT TO THE ORDER IS SIMILAR TO THE INTERSTATE TRAFFIC IN THE DISTRICT IN RESPECT TO (1) COST OF SERVICE, (2) KIND OF TRAFFIC, (3) THE CARRIERS PERFORMING THE SERVICE AND (4) THE CONDITIONS AND CIRCUMSTANCES SURROUNDING THE SERVICE. (pp. 128-136.)

Florida East Coast R. Co. v. *United States*, 234 U. S. 167.

Increased Switching Charges at Detroit, 91 I. C. C. 82.

United States v. *Illinois Central R. R. Co.*, 263 U. S. 515, 524.

I. C. C. v. *B. & O. R. R. Co.*, 145 U. S. 263, 284.

(e) THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT A FINDING THAT THE INCREASE IN THE INTRASTATE RATES TO THE INTERSTATE BASIS WOULD IMPROVE THE POSITION OF THE APPELLEE CARRIERS IN SO FAR AS ADDITIONAL INCOME IS CONCERNED. (pp. 136-139.)

Florida v. *United States*, 282 U. S. 194.

Georgia Public Service Commission v. *A. C. L. R. R. Co.*, 146 I. C. C. 717.

(f) THERE IS NO EVIDENCE TO SUPPORT THE FINDING THAT THE UNJUST DISCRIMINATION AGAINST INTERSTATE COMMERCE FOUND TO EXIST WAS OCCASIONED BY THE SAME CARRIERS WHO MAINTAINED THE INTRASTATE RATES WHICH UNJUSTLY DISCRIMINATED IN FAVOR OF INTRASTATE TRAFFIC (pp. 139-141.)

Texas & Pacific R. Co. v. *United States*, 289 U. S. 627.

VII.

The order of the Commission holding that the intrastate rates on grain switching constituted discrimination against interstate commerce is void for the following reasons: (p. 142.)

(A) IT IS BASED ON ITS FORMER ORDER OF JULY 31, 1931, WHICH WAS VOID BECAUSE THERE WAS NO SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT A FINDING JUSTIFYING ANY INCREASES IN THE THEN EXISTING INTERSTATE GRAIN SWITCHING RATES. (pp. 142-148.)

Florida v. *United States*, 282 U. S. 194, 214.

United States v. *Abilene & S. R. Co.*, 265 U. S. 274, 288.

Florida East Coast R. Co. v. *United States*, 234 U. S. 167.

(B) IT WAS BASED UPON A MISCONCEPTION OF THE ISSUES INVOLVED WITH RESPECT TO THE GRAIN SWITCHING RATES AND A MISINTERPRETATION OF THE POWERS DELEGATED TO IT BY THE INTERSTATE COMMERCE ACT AND WAS IN DIRECT VIOLATION OF SECTION 15 (7) OF THE INTERSTATE COMMERCE ACT. (pp. 148-156.)

Interstate Commerce Act, Section 15(7). (See Appendix.)

Beaumont, S. L. & W. R. Co. v. *United States*, 282 U. S. 74, 86.

Coxe Brothers & Co. v. *Lehigh Valley R. R. Co.*, 4 I. C. R. 535, 582.

National Hay Asso. v. *Lake Shore & Michigan Southern R. Co.*, 9 I. C. R. 264.

Anaconda Copper Mining Co. v. *Director General*, 57 I. C. C. 723, 729.

United States v. *Abilene & S. R. Co.*, 265 U. S. 274, 288, 289.

I. C. C. v. *L. & N. R. Co.*, 227 U. S. 88, 93.

Atchison, Topeka & Santa Fe R. Co. v. *United States*, 284 U. S. 248, 262.

VIII.

The difference between intrastate rates on the one hand and interstate rates on the other hand is justified by the difference between intrastate service and interstate service. (pp. 156-158.)

Switching Rates in Chicago Switching District, 195 I. C. C. 89, 119.

Coxe Brothers & Co. v. *Lehigh Valley R. R. Co.*, 4 I. C. R. 535, 560.

IX.

The court erred in failing to find the facts specially and to state separately its conclusions of law thereon as required by Equity Rule 70½. (pp. 159-161.)

Equity Rule 70½.

Public Service Commission of Wisconsin v. *Wisconsin Telephone Co.*, 289 U. S. 67.

Public Service Commission of Indiana v. *Northern Indiana Public Service Co.*, 289 U. S. 703.

ARGUMENT.

I.

An order of the Commission must be enjoined (1) if the Commission misconceives its authority under the law, (2) if the parties have been denied a full and fair hearing, (3) if the order is not supported by the necessary subordinate findings, (4) if the order is indefinite and lacks precision, and (5) if the order and the findings on which it is predicated are not supported by substantial evidence properly presented and received.

At the outset let it be made plain that we do not question the power of the Commission to enter an order under Section 13 of the Act prescribing minimum rates on intrastate traffic. We do assert, however, that the validity of such an order is conditioned upon compliance with the following propositions of law:

1. The Commission must not proceed upon a misconception of its authority. (In *United States* v. *New York Central R. Co.*, 263 U. S. 603, an order of the Commission dealing with interchangeable mileage books was set aside because the Commission misconceived what was required of it by the statute under which it acted. See also *United States* v. *Missouri Pacific R.*, 278 U. S. 269, the *Subiaco* case involving the construction of Section 15(4) of the Act, and *Ann Arbor R. R.* v. *United States*, 281 U. S. 658, the latter involving the construction of the Hoch-Smith resolution.)

2. The parties must be given a full and fair hearing. (*A. T. & S. F. Ry. Co.* v. *United States*, 284 U. S. 248; *United States* v. *Northern Pacific R. Co.*, 288 U. S. 490.)

3. The order must be supported by the necessary subordinate findings. (*Florida* v. *United States*, 282 U. S. 194; *I. C. C.* v. *Northern Pacific R. Co.*, 216 U. S. 538; *Beaumont, S. L. & W. R. Co.* v. *United States*, 282 U. S. 74.)

4. The order must be definite and precise.

5. The order and findings on which it is predicated must be supported by substantial evidence properly presented and received. (*Florida East Coast R. Co.* v. *United States*, 234 U. S. 167; *Interstate C. C.* v. *L. & N. R. Co.*, 227 U. S. 88; *Chicago Junction Case*, 264 U. S. 258; *United States* v. *Abilene & S. Ry. Co.*, 265 U. S. 274, in which latter case this court held that records of carriers in the Commission's files can not be treated as evidence when not introduced as such in the proceeding before the Commission.)

II.

The Commission failed to give effect to the provisions of Emergency Railroad Transportation Act, 1933, approved June 16, 1933, (C. 91, Title 2, sec. 205, 48 Stat. 220).

When the Commission's order of July 31, 1931, prescribing reasonable rates for interstate switching within the Chicago switching district was made, Section 15a with all of its provisions, as approved February 28, 1920, and Section 13 (4), as set forth in Appendix A hereto, were in full force and effect. After the instant case was submitted on brief and oral argument and prior to July 3, 1933, the Congress repealed all of Section 15a and substituted in its stead a new rule of rate-making. It is our contention that the duty of the Commission was substantially changed by the enactment of the Emergency Railroad Transportation Act of 1933, insofar as the procedure to be followed in considering such cases is concerned.

Under Section 15a prior to June 16, 1933, the Commission was required in the exercise of its power to prescribe just and reasonable rates, to initiate, modify, establish or adjust rates so that carriers as a whole, or as a whole in each of such rate groups or territories as the Commission may from time to time designate, will earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the value of the property used in transportation. When the instant case was decided that provision of law had been changed to read as follows:

> "'Sec. 15a. (1) When used in this section, the term "rates" means rates, fares, and charges, and all classifications, regulations, and practices relating thereto.
>
> (2) In the exercise of its power to prescribe just and reasonable rates the Commission shall *give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service'.*" (Our italics.)

The italicised portion of the section as above set forth is new matter and all matter, other than the unitalicized matter in the above quotation, in Section 15a as added by the Transportation Act, February 28, 1920, was stricken from the Interstate Commerce Act.

When the order in the instant case was made the treatment of the carriers as a group in rate-making no longer was to be followed. The Commission is simply required in prescribing just and reasonable rates, to give due consideration, among other factors (a) to the effect of rates on the movement of traffic; (b) to the need in the public interest of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such ser-

vice; and (c) to the need of revenue sufficient to enable the carriers to provide such service. This is a requirement to consider the needs of the individual carriers and not the needs of the group.

There is no finding in the instant case as to what rates would be just and reasonable, giving due consideration, among other things, to the factors just named. As to the first of these, *i. e.*, the effect of rates on the movement of traffic, the evidence in this record is complete in its showing that the 3, 3.5 and 4 cent rates for 1-line, 2-line and 3-or-more-line, respectively, prohibit a large movement of traffic.

In the Statement of the Case we set forth the evidence in this respect. Suffice it here to say that not a single witness on behalf of the carriers gave any testimony as to the effect of the increased interstate rates on the movement of traffic. Representative shippers all joined in the statement that truck competition was keener than ever before; highways were in better shape and afforded opportunity for much greater movement of traffic in the switching district than ever before; that in many instances even the intrastate rates of 2.5, 2.5 and 3 cents were so much in excess of the costs of movement by truck, that a large volume of movement intrastate was being performed by truck; and that increasing the intrastate rates to the interstate basis would divert a much greater volume of traffic to other forms of transportation or plant conveyors. This testimony was so impressive that in the proposed report of Examiners Faul and Wilbur (R., 131-2) they reviewed the testimony as to the effect on the movement of traffic that would follow increasing the intrastate rates to the increased interstate basis, noted the decision of this Court in the *Florida case*, 282 U. S. 194, and then said (R., 134):

"The record *does not indicate* that an increase in the

> intrastate rates to the level of the interstate rates would result in increased revenues to the carriers. The testimony shows that the existing competition by motor truck is material, and indicates that this means of transportation will be utilized to a greater extent if the intrastate rates are increased, and also that some tonnage would be diverted to barges and pipe lines." (Our italics.)

When the Commission came to decide the case it found (R., 165) that over improved highways and navigable waterways a substantial volume of tonnage was handled that otherwise would move by rail, and that witnesses testified that any increase in the present intrastate rates on their commodities, which included pig iron, paving and roofing tar, sulphuric acid and other chemicals, crushed stone, and others would divert the tonnage to motor trucks, pipe lines or barges. Yet the Commission said (R., 165):

> "we are not convinced that any substantial proportion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if the rates found reasonable for interstate traffic are applied thereto."

It will be noted that here is a negative statement of belief, a mere expression as to the mind of the Commission, that it is *not convinced* that the diversion will occur. However, when it comes to the formal findings (R., 166), we note the following:

> "While the evidence shows that the existing competition by motor truck is material, and indicates that this means of transportation will be utilized to a greater extent if the intrastate rates are increased, and that therefore, some additional tonnage in all probability will be lost to trucks, or diverted to barge and pipe-line movement, the record nevertheless is convincing that the carriers will derive a substantial increase in revenue if the intrastate rates are increased to the interstate basis, and we so find."

We insist that the expression "we so find" in the concluding portion of the quotation above set forth in the formal finding is a mere conclusion of the Commission and that it must set forth in its findings substantial facts from which this Court could affirmatively conclude that the carriers will derive a substantial increase in revenue if the intrastate rates are increased to the interstate basis.

We call attention to these expressions in the Commission's report to show that it did not give that proper consideration which Emergency Railroad Transportation Act, 1933, requires should be given to the effect of the proposed increased rates on the movement of traffic. There is nothing in the record to show that the railroad respondents are not now furnishing adequate and efficient railway transportation service on the 2.5, 2.5 and 3 cent intrastate rates. Moreover, the evidence shows that the nine switching carriers who derive their revenue exclusively from service in the Chicago switching district, provide such service, and that their average rate of return over a period of years exceeded the rate of return prescribed for carriers as a whole or in a group.

Therefore, we insist that the Commission has failed to heed the requirements of Emergency Railroad Transportation Act, 1933, in the three particulars specified in amended Section 15a. In the decision of this Court of April 2, 1934, in *Florida* v. *U. S.*, No. 342, October Term, 1933, Mr. Chief Justice Hughes comments upon the provisions of Emergency Railroad Transportation Act, 1933, notes that as a result of the amendment to Section 15a the group method of rate-making is eliminated and a new rule of rate-making is substituted. While it is true that the new rule of rate-making leaves the power of the Commission under Section 13 (4) intact, it by no means relieves the Commission from

the necessity of considering the matters provided in the amended Section.

What we are here complaining of is that the Commission did not give that consideration to the factors specifically named in Section 15a. Mere lip service is not sufficient; full effect must be given to substantial evidence in this respect. That has not been done.

III.

The order of the Commission is void because of an abuse of discretion by the Commission in denying motions of January 28, February 3 and February 18, 1932, for an order requiring the railroad respondents to conduct a cost study which would reflect conditions in 1932, and in denying the petition of August 15, 1933, for re-opening, for further hearing, for reargument and/or reconsideration. The full hearing required by the Interstate Commerce Act was not had.

The original decision of the Commission approving increased interstate switching rates was made on July 31, 1931. The testimony upon which that decision was based was submitted at hearings which concluded on September 21, 1928, (R., 941), and related almost entirely to a cost study by 15 of the 35 rail carriers in the Chicago switching district for single-week periods at varying times during the year 1927, applied to a traffic test made by all of the railroads for the month of September, 1926.

The rates found reasonable for interstate application became effective December 10, 1931. The motion of the carriers for a 13th Section order requiring intrastate switching rates within the Chicago switching district in Indiana and in Illinois to be made the same as the contemporaneous interstate rates, was filed in September, 1931. That motion

by the carriers was denied by the Commission. The Commission of its own motion on November 2, 1931, reopened Docket 19610 for further hearing with respect to the relation of rates and charges for switching in intrastate commerce to rates prescribed for like switching in interstate commerce.

Prior to the further hearing to be had in accordance with said order of reopening, the Public Service Commission (of Indiana), on March 8, 1932; the Illinois Commerce Commission on February 6, 1932, and the Acme Steel Company (with 57 other shippers) on January 30, 1932, filed their separate motions (see Appendix B hereto) with the Commission in which the Commission was asked to require the respondent railroad carriers to conduct a cost study under the supervision of the Commission for a representative period of one month by each and every carrier within the Chicago switching district.

On page 3 of this Appendix will be noted the allegation that the carriers' cost study, then of record, was defective in several respects among other things:

> "(f) The testimony as to cost relates wholly to a period not later than October 25, 1927, and the hearing was concluded on September 21, 1928."

Further, it was pointed out (page 14) in support of such allegation:

> "Attention is again directed to the fact that all of the testimony introduced in this proceeding as to cost, relates wholly to a period not later than October 25, 1927, and the hearing was concluded on September 21, 1928.
>
> It would thus appear that your Commission is asked by the respondent carriers to require increases in intrastate switching rates within the State of Illinois based largely upon evidence of cost relating to a period over four years ago."

The three motions were denied February 8 and March 14, 1932.

At the hearing on May 2, 1932, request was again made for data reflecting conditions at that time. (R., 943; Tr., 2140.) It was pointed out in response to a statement by one of the presiding Examiners to the effect that the reasonableness of the interstate switching rates had already been determined, that the determination was on a record five years old, that the decision of the Commission could not properly be based upon a record so old, to which the Examiner replied "you made the same argument in your recent petition to the Commission for a rehearing and to bring the record down to date and that petition or those petitions were denied:" (R., 943; Tr., 2142.)

The position of the Illinois Commerce Commission was stated in the testimony of Mr. George H. Shafer, Transportation Rate Expert for that Commission. Counsel had asked Mr. Shafer to state the position of the Illinois Commerce Commission. Examiner Faul pointed out that the Commission had overruled three motions for a new cost study, but permitted Mr. Shafer to answer the question. He stated (R., 1093; Tr., 2852-5):

> "Naturally we feel the evidence as to cost taken in connection with 1927 traffic, the hearing having closed in 1928, should not be used as a basis for increasing rates in the state of Illinois, and our position is that the record today should reflect present-day conditions, and that an order for the future should be based upon those conditions, upon the facts as they are today. * * * The Illinois Commerce Commission insists that before the laws of the state of Illinois are set aside entirely, we shall have opportunity to have the facts presented as they are at the time the action of the Interstate Commerce Commission is taken."

Mr. O. R. Livinghouse, Examiner-in-Chief of the Traffic

Bureau for Public Service Commission of Indiana, in his testimony stated the position of that Commission as follows (R., 1121, 2; Tr., 2943):

> "I do not know whether the cost study is representative of present-day conditions. I say that the time that has elapsed is so great, and conditions have changed so, that a cost study of that earlier period I do not think is proper to base a decision on at this time. We desire an up-to-date cost study, and so petitioned the Commission, but were refused, and in that we ask for a cost study to cover not only the fifteen lines involved in the prior study, but to cover all carriers included in the switching district that the cost study covered, and longer period of time than the prior one, because the time was not sufficiently long to determine the real true cost basis; * * * I know there has been a material change in the cost of commodities, and many items of operating expenses in all switching districts. (R., 1122; Tr., 2945.) * * * Conditions in many switching communities change frequently probably not from day to day, but there will be changes from month to month. A study of the February movement might not be applicable to August. If we made a study for December it would not be applicable for July and because one made in 1930 would not be applicable in 1931 is the reason we ask for a more complete cost study. * * * Conditions change from month to month. (R., 1123; Tr., 2947-8.) * * * All the costs were made jointly under all 3 commissions. No valuation of the switching facilities lying within Indiana, separate and distinct from the other was submitted at the hearing, nor were operating costs applied to that property within Indiana to purely intrastate traffic shown at the hearing." (R., 1125; Tr., 2954.)

In the decision of July 3, 1933, 195 I. C. C. 89 at page 92 (R., 140) the Commission refers to the criticisms made by the representatives of the Illinois Commerce Commission, Public Service Commission of Indiana and the shippers; at page 95 (R., 143) the Commission comments on the position of the state commissions and of the shippers and their re-

quest that evidence as to costs should be brought down to date to reflect present-day changed conditions.

Subsequent to the Commission's decision of July 3, 1933, in which the Commission found a violation of paragraph (4) of Section 13 of the Interstate Commerce Act, a joint petition was filed by appellants with the Commission on August 15, 1933, seeking a reopening for further hearing, for setting aside of the order, for reargument and/or reconsideration. That petition restates the grounds upon which the motions for a new cost study were based, and is printed as Appendix D to the bill of complaint herein. (R., 169.)

Practically every ground urged in the bill of complaint herein as the basis for setting aside the Commission's order was embraced in said petition for further hearing. It was pointed out in paragraph 6 of Section II of the petition that the finding as to what the interstate rate should be was made on a record closed in 1928, the evidence therein relating to a cost study was ascertained as to certain traffic moving during certain periods in 1927 over certain railroads and was applied on certain traffic moving in September, 1926. In respects other than costs it was pointed out that conditions had changed. (R., 173.)

In paragraph 16 of Section II of the petition it was alleged (R., 177):

> "The cost studies presented by the respondents are based on arbitrary assumptions involving the use of unweighted averages, are of carriers not representative of the entire switching district, are of alleged costs of a few of the carriers for periods of time entirely too limited in scope and not representative of the years' business over a period of time sufficient to reflect the average annual cost of switching service; were made six years ago, were applied against traffic moving seven years ago, and therefore are so remote as to be wholly improper as a basis for finding present costs, and are

otherwise so defective as to constitute no proper basis for a finding as to reasonableness or unreasonableness of rates now in effect, in effect prior to December 10, 1931, and proposed to be made effective September 20, 1933, on interstate traffic and on intrastate traffic."

In Section III of said petition (R., 180) it was alleged that conditions had changed, that truck competition had vastly increased, and for those reasons, among others, the Commission was requested to reopen the proceedings for further hearing.

In the absence of a new cost study it was impossible for appellants to show in detail at the hearings on which the *Second Report* was based, the extent to which present costs of transportation are less than in 1926-1927. It is shown, however, on pages 10, 11 and 12 of Exhibit 120 (R., 1241; Tr., 103), that comparing 1931 with 1926 there was a 10 per cent reduction in the cost of labor and that the labor cost alone was 43.42 per cent of the engine-hour costs developed in the cost study. It was also there shown that there was a 10 per cent reduction in cost of fuel, and a 2 per cent reduction cost in cross ties. (R., 1247; Tr., 123.)

Pages 20 and 20½ of Exhibit 120 show that the average cost per car handled by the lines in the district engaged exclusively in switching service was less in 1931 than in 1926. (R., 1252; Tr., 133.)

We contend that the action of the Commission in refusing to require the carriers to bring the cost study down to date, evidenced by their denial of the motions for the conduct of a proper cost study to reflect conditions subsequent to September, 1928, and their refusal to reopen the case for further hearing at which data upon which the Commission's decision was based in determining the level of interstate rates could be brought down to date, was an abuse

of discretion and that the order of the Commission was void and should be set aside.

The first decision of the Commission, dated July 31, 1931, (R., 33) was predicated almost entirely upon the result of the cost study made by certain of the respondents in 1927 as applied against a traffic test in September, 1926. The costs commented upon in the Commission's decision of July 3, 1933, (R., 137), were ascertained six years prior thereto and were applied against a traffic test more than seven years prior thereto.

The effect of a denial of a similar request for further hearing upon a Commission order was before the District Court for the Northern District of Illinois, specially constituted, in the case of *Atchison, Topeka & Santa Fe Railway Company, et al.* v. *United States*, 51 Fed. (2d) 510. A rehearing was sought before the Commission by railroads affected by an order reducing grain rates. In that case the order of the Commission dated July 1, 1930, was to go into effect on October 1, 1930. In September, 1930, the carriers asked for a rehearing, which was denied in November, 1930. A further petition for rehearing was presented on February 18, 1931, describing the situation then existing. The carriers in that case alleged that since the closing of the record before the Commission in September, 1928, there had been material and important changes in the operating, traffic and transportation conditions in the western district which affected adversely the revenues of the carriers and that regardless of the question of the validity and propriety of the order when made, it would no longer be valid and proper in the light of the existing circumstances. It was urged before the District Court that the Commission had erred in denying this second application on March 3, 1931. On April 10, 1931, the Commission made a supplemental report modifying its former decision and making the same effective

on June 30, 1931, but denying a further hearing. It was contended before the District Court that the order of the Commission was void because of the refusal of the petition for further hearing to show changes during the intervening two years and five months, but that court overruled the contention, saying (page 516):

> "If the Commission has no discretion to deny petitions for rehearing because of changed conditions, it would never arrive at a time when it might enter a lawful order. But the Commission has a discretion in the premises and even though we might believe it would have been wiser in the present case to have granted a rehearing, we have no right to substitute our judgment in that respect for that of the statutory body. Nor, in view of the character of rate orders and the nature of the Commission's duties, do we find any evidence of arbitrary abuse of discretion."

This Court, however, on appeal, 284 U. S. 248, 76 L. ed. 273, held that the denial by the Commission of a rehearing in 1931, sought upon the ground of changed economic conditions made upon a record which was closed in September, 1928, was not within the permitted range of the Commission's discretion, but a denial of right. In commenting on the question presented to it, this Court said (284 U. S. 248, 260-1, 76 L. ed. 273, 281):

> "It is plain that a record which was closed in September, 1928—relating to rates on a major description of the traffic of the carriers in a vast territory—cannot be regarded as representative of the conditions existing in 1931. That record pertains to a different economic era and furnishes no adequate criterion of present requirements."

Further, this Court said (284 U. S. 248, 262, 76 L. ed. 273, 281):

> "In the discharge of its duty, a fair hearing is a fundamental requirement. *Interstate Commerce Commission* v. *Louisville & N. R. Co.*, 227 U. S. 88, 91, 57

> L. ed. 431, 433, 33 S. Ct. 185. In the instant proceeding, the hearing accorded related to conditions which had been radically changed, and a hearing, suitably requested, which would have permitted the presentation of evidence relating to existing conditions, was denied. We think that this action was not within the permitted range of the Commission's discretion, but was a denial of right. The order of the Commission which was thus made effective, and the ensuing supplemental order, cannot be sustained."

The record in the *Grain case* was closed in September, 1928, and presumably covered the conditions existing at that time. The cost study in the instant case submitted in the record which closed in September, 1928, related to alleged costs developed in September, 1927, and was applied to a traffic test made in September, 1926. As thus applied those costs were two years old at the time the record closed in the first case. The motions for the further cost study presented to the Commission in January and February, 1932, were made four and one-half years after the cost study had been made and five and one-half years after the traffic test was made. The decision of the Commission on July 3, 1933, was made six years after the cost study and nearly seven years subsequent to the traffic test. No evidence that the interstate rates were reasonable relates to any later date. The petition for further hearing to bring the record down to date was filed August 15, 1933, challenging the validity of the order made upon such testimony.

Having in mind the action of this Court in reversing and setting aside the order of the Commission in the *Grain case*, because of the refusal to grant the petition of the carriers to bring the record down to date over an intervening period of two and one-half years, it would follow that the order herein is void because of the refusal of the Commission to require the carriers to make a cost study in this case, bring-

ing the record down to date over an intervening period of four and one-half years. Here the order of the Commission strikes down the power of the sovereign states of Illinois and Indiana, notwithstanding their demand for a hearing at which the facts showing changed conditions could be made a part of the record.

There is nothing in the decision of this court in *U. S.* v. *Northern Pacific Railroad Co.*, 288 U. S. 490, 77 L. ed. 914, which in any wise weakens the force of the decision in the *Grain case*. In the Northern Pacific case this court did not consider the merits of the application for rehearing because in that case the carriers' lack of diligence in bringing the matter to the Commission's attention deprived them of any equity to complain of the refusal of their petition. This court held that the denial of a rehearing "in view of this delay, was not such an abuse of discretion as would warrant setting aside the order."

The Commission in the instant case refused to heed plaintiffs' request that a record embracing a new cost study be made which would reflect present day conditions. It was urged in the court below that the cost study of record required the expenditure of about $250,000 and as one ground for not having a new and a representative cost study that the additional cost would have been $1,000,000. The fact that an accurate and correct cost study might be extremely expensive is no justification for the use of a less expensive cost study which does not reflect current facts. The burden of proof was upon the carriers to support by proper evidence the finding sought from the Commission, and if, in discharging that burden, they expected to and did rely on a cost study, it was incumbent upon them, without regard to the cost of securing same, to furnish a reasonably accurate and representative cost study which portrayed the true situation. If the cost of

such a study was prohibitive, then it goes without saying that it devolved upon them to find some other method of demonstrating the essential facts. Certainly they can not now be heard to say that, because proper evidence is too expensive, the Commission has a right to rely upon improper, inaccurate and, consequently, immaterial evidence. They might as well have dispensed with the so-called cost study entirely and guessed at the figures, and thereby saved the expense of the pseudo cost study. It is fundamental that whatever is worth doing at all is worth doing right. In *Atchison, Topeka & Santa Fe R. Co.* v. *U. S., supra,* in which the carriers sought to enjoin an order of the Commission, it was urged by the Commission that reopening would have meant further lengthening the proceedings, but this Court stated, at page 262:

> "And the prospect that a hearing may be long does not justify its denial if it is required by the essential demands of justice."

So we insist that having suitably requested further hearing to obtain cost studies by all of the carriers reflecting conditions in 1932, it was error by the Commission to deny that further hearing. The denial was not within the permitted range of the Commission's discretion but was a denial of right. For that reason alone the Commission's order of July 3, 1933, should be set aside as void. Elsewhere we discuss the invalidity of the cost study and the reasons why this court should hold that it constituted no evidence upon which the Commission could find that rates of 3 cents for 1-line, 3.5 cents for 2-line, and 4 cents for 3-or-more-line hauls were justified as reasonable maximum rates for interstate application.

IV.

The order of the Commission is void because it is not supported by the necessary subordinate findings.

(a) THERE IS NO PROPER FINDING THAT THE INCREASED INTERSTATE RATES WOULD BE OR ARE REASONABLE PER SE.

That an order of the Commission is in proper form does not necessarily mean that it is a valid order. An order to be valid must be accompanied by a report in which it is shown by appropriate findings of the Commission the extent to which the rates dealt with are in violation of the statute. It must be further shown by appropriate findings that the rates compelled by the order are required by and would be in conformity with the statute.

In *Beaumont, S. L. & W. R. Co.* v. *United States,* 282 U. S. 74, 86, this Court said:

> "Complete statements by the Commission showing the grounds upon which its determinations rest are quite as necessary as are opinions of lower courts setting forth the reasons on which they base their decisions in cases analogous to this."

The character of the subordinate findings which are necessary to support a given order depends upon the character of the power which the Commission is exercising. In this case, considering as we must both the *First* and the *Second Reports,* the Commission purports to be exercising the power conferred upon it to prescribe maximum reasonable rates which conform to Section 1 of the Act, and also the power conferred upon it to require the maintenance of intrastate rates which shall not unjustly discriminate against interstate commerce, in conformity with Section 13(4) of the Act.

In exercising its power to prescribe rates which conform to section 1 of the Act, it was necessary for the Commission

to find definitely that the rates prescribed or approved would be just and reasonable. Such a finding must necessarily be made as to the interstate rates before the Commission can prescribe such interstate rates as the minimum rates on intrastate traffic. This is so because the whole foundation of the case, considered as a whole, is in a finding that the rates approved on interstate traffic in the *First Report* are just and reasonable rates. In the absence of that finding and of the increased interstate rates which resulted therefrom, there would be no occasion for the proceeding which culminated in the *Second Report*. Stated differently, it is because the Commission came to the conclusion and found that, under the evidence, the carriers had justified the reasonableness of the increased interstate rates and of its belief, which as elsewhere shown herein is unsupported by the evidence, that what is reasonable for interstate traffic in the district would also be reasonable for intrastate traffic, that it entered the order complained of requiring the intrastate rates to be increased to the same amounts as were contemporaneously applicable on interstate traffic.

This Court in *United States* v. *Louisiana*, 78 L. Ed. Adv. Ops. 50, speaking of the preliminary finding as to the interstate rates which the Commission used as its yardstick for determining minimum intrastate rates observed that:

> "* * * the ultimate finding that the rates as generally applied are reasonable, supported by evidence * * * complies with the statute."

The plain implication is that if the ultimate finding as to the reasonableness of the interstate rates is not made and is not supported by the evidence, the statute is not complied with.

In so far as the reasonableness of the interstate rates is concerned, the Commission in its *First Report* expressed

its finding in the following language (R., 75-6, emphasis ours):

> "The ascertainment of the cost of performing a particular service is always beset with serious difficulties, and this is particularly true in connection with switching costs within an area as congested as the Chicago switching district, which presents a complicated network of rail lines probably not equaled in any other section of the country. The cost study presented herein is perhaps more exhaustive than any heretofore undertaken in any proceeding involving switching charges. Considering these facts and *the further fact that all of the parties, both shippers and carriers, were practically unanimous in contending for the establishment of an all-commodity basis to apply throughout the Chicago switching district,* it appears that the rates proposed for the one, two, and three-or-more line movements are not excessive. We find:
>
> (*a*) That the rates proposed of 3 cents per 100 pounds for 1-line hauls, 3.5 cents for 2-line hauls, and 4 cents for 3-or-more line hauls, carload minimum 60,000 pounds, within the Chicago switching district as defined in Appendix A, will not be unreasonable for the future for application on all of the commodities switched within the district, except railway equipment on its own wheels."

We assert that the finding just quoted is not in proper *form* in that, by its own terms, it is predicated on and qualified by an alleged agreement by certain unnamed shippers that the switching rates within the Chicago district should be the same in amount on all commodities. The precise matter, however, with which the Commission was dealing was the amount of the switching charge and, even if there had been an agreement between all shippers as to the manner in which a reasonable switching charge should be applied; that agreement as to manner of application does not support a finding as to the amount of the charge.

Furthermore, the State Commissions, in administering the powers conferred upon them by the sovereign states of

Illinois and Indiana, have held that the increases proposed in intrastate rates in effect at the time of the *First Report* had not been justified. The two State Commissions, who are appellants in this proceeding, deny that an agreement by shippers as to the manner in which rates should be applied can serve as the basis for forcing upon intrastate commerce, rates higher than the State Commissions have found would be reasonable.

Consequently, we assert that at the outset the order complained of must be held void because it is not supported by a proper finding directed to the reasonableness of the *maximum* interstate rates which, in the *Second Report,* were prescribed as the *minimum* for intrastate commerce.

However, even if we were to admit that the finding as to the reasonableness of the interstate rates is valid in form, we later show, under point VI-(a) that the finding so made is unsupported by the evidence.

Furthermore, again admitting for the sake of the argument that the finding as to reasonableness of the interstate rates is proper in form, we shall now proceed to show that the Commission failed to make, in either the *First* or *Second Reports,* certain other findings which are necessary prerequisites to the validity of a section 13(4) order prescribing as minimum on intrastate traffic rates theretofore approved as maximum on interstate traffic.

(b) THERE IS NO FINDING THAT THE INTRASTATE TRAFFIC UPON WHICH THE RATES SUBJECT TO THE ORDER WERE ASSESSED IS OF A LIKE KIND AND SIMILAR TO THE INTERSTATE TRAFFIC IN RESPECT TO THE CONDITIONS UNDER WHICH THE SWITCHING SERVICE IS RENDERED.

The matter with which we are immediately concerned is unjust discrimination. The phrase "unjust discrimination" has been a part of the Interstate Commerce Act since 1887, being used in Section 2 (49 U. S. C., Sec. 2.) In the

absence of any clear showing to the contrary, it must be assumed that when the same phrase is used in Section 13, paragraph 4, which was made a part of the Interstate Commerce Act by the Transportation Act of 1920, it was intended to have the same definition and interpretation as had theretofore been made of the phrase in Section 2.

In many cases, both by the Commission and by the courts, the term "unjust discrimination" used in Section 2, and the term "preference and prejudice" used in Section 3, have been used interchangeably. The underlying thought in unjust discrimination is different treatment, when, under the circumstances and conditions existing, there should be no difference in treatment.

The language of the statute in Section 2 sets forth as necessary factors in unjust discrimination: (a) a like and contemporaneous service in the transportation (b) of a like kind of traffic, (c) under substantially similar circumstances and conditions; unless all three of these factors exist in a particular case there is no "unjust discrimination" shown.

At page 711 of the *First Report* (R., 75) under the heading "Des Plaines, Ill.," the Commission said:

> "A large percentage of the traffic under consideration is intrastate in character, but the record does not disclose any difference in the conditions surrounding the handling of the interstate and intrastate movements. In the hope that both the Illinois Commerce Commission and the Public Service Commission of Indiana will bring their rates in harmony with the conclusions herein, no specific finding or order with regard to intrastate rates will be entered at this time."

If it be argued that the matter above quoted is the equivalent of a finding that the intrastate traffic subject to the order is like the interstate traffic, we point to the fact that the Commission itself specifically declined, in its *First Report*, to make any finding one way or the other.

A statement that "the record does not disclose any difference" is wholly negative and is not the equivalent of finding affirmatively that the service on intrastate traffic is like and similar to the service on interstate traffic. In this case the Commission, purporting to act under authority of the statute, is overriding the well-considered action of the duly constituted regulatory bodies in the States of Illinois and Indiana. Certainly in such case the order can not be supported by negative statements of the character just quoted.

Furthermore, it will be recalled that, although requested, by the carriers so to do, the Commission declined to make a Section 13 order based on the evidence before it and the findings made in the *First Report*. By that action the Commission embarked upon a course of action which required it to incorporate in the *Second Report* such findings as under the statute must be made in support of the order entered.

There are no findings in the *Second Report* which bring the disparities between intrastate and interstate rates, which were the subject of investigation, within the definition of unjust discrimination contained in Section 2. The nearest approach to it is the finding on page 118 of the *Second Report* (R., 166), which reads:

> "We further find that the transportation conditions throughout the Chicago switching district are substantially similar;"

In the light of the facts in this case, that finding means nothing. To find that conditions throughout the entire district are substantially similar is not the equivalent of finding that a single-line haul of 6.3 miles in intrastate commerce in Indiana is like a 15-mile haul in interstate commerce and is performed under substantially similar circumstances and conditions. The finding required is not one

directed to general conditions throughout the district, but rather is directed to conditions surrounding *intra*-state *service* as compared with or distinguished from the conditions surrounding *inter*-state *service*.

There is no finding at all that the intrastate traffic is like the interstate traffic in respect to the commodities carried, and obviously, from the facts recited in our Statement of the Case (pp. 38-9 above), there was no evidence upon which such a finding could be predicated.

There is no finding that the carriers which maintain the approved level of interstate rates are the same carriers who contemporaneously maintain a different level of intrastate rates. Here again, from the facts heretofore recited, it is obvious that no such a finding could be made, particularly when 1-line hauls are considered, since 20 of the carriers in the district do not operate across the state line and for such carriers it would be physically impossible to engage in 1-line interstate traffic.

(c) THERE IS NO FINDING THAT AN INCREASE IN THE INTRASTATE RATES WILL PROVIDE ADDITIONAL INCOME FOR THE CARRIERS.

A second subordinate finding which is necessary to support an order under Section 13(4), particularly where, as here, the Commission states that there is no basis for finding unjust discrimination against either persons or localities, is that the compelled increase in the intrastate rates will augment the net revenues of the carriers.

Before undertaking a discussion of law in respect to this point it is desirable to consider briefly the two types of discrimination with which the Commission is empowered to deal under Section 13 and the character of subordinate findings which are necessary, depending upon the type of dis-

crimination involved. If the discrimination is between persons and localities there is no need for the Commission to go farther than a finding that there exists a difference in rates and charges which is not justified by difference in conditions. In such a case the Commission is not concerned with the results of the establishment of a proper rate relation upon the income of the carrier; that is, even though increased intrastate rates might produce less income than the rates assailed, the interstate shipper is entitled to the parity of rates, transportation circumstances and conditions considered, which the law guarantees him.

However, when the discrimination found to exist is confined solely to that between intrastate and interstate commerce, an entirely different situation is presented. In such a case, even though it is found that there is a difference in rates which is not justified by the difference in the conditions surrounding the service, it is still necessary for the Commission to consider and pass upon the matter of relationship of rates to net income. In such a case, unless there is substantial evidence which proves that the prescription of equal rates, services considered, would provide additional income for the carriers, and unless a proper finding predicated on such evidence is made, there is no support for a Section 13 order.

In *Florida* v. *United States*, 282 U. S. 194, this Court set aside a Section 13 order entered by the Commission in *Georgia Public Service Commission* v. *A. C. L. R. Co.*, 146 I. C. C. 717, because of the absence of a finding of the character just mentioned, the Court saying (page 214) (emphasis ours):

> "In considering the authority of the Commission to enter the state field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question is that of the relation of rates to *income*. The raising of rates does not necessarily increase revenue. It

may in particular localities reduce revenue instead of increasing it, by discouraging patronage.'"*

and further:

"The Commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, *additional income* necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service.

The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds of the Commission's determination, to the importance of which this court has recently adverted (*Beaumont, S. L. & W. R. Co.* v. *United States*, decided November 24, 1930, 282 U. S. 74, *ante*, 221, 51 S. Ct., 1), but of the lack of the basic or essential findings required to support the Commission's order. In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit."

We would particularly emphasize the use by the Court of the phrase "additional income."

In *United States* v. *Louisiana*, 78 L. Ed. Adv. Ops. 50, 56, hereinafter referred to as the *Louisiana Surcharge Case*, there was involved a Section 13 order of the Commission prescribing the same surcharges on intrastate traffic as had been previously prescribed as an emergency revenue matter on interstate traffic. This Court, however, observing that the form in which the Commission cast its findings was not to be commended, said:

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*"In the *Florida Fertilizer Case*, 151 Inters. Com. Rep. 602, the Interstate Commerce Commission, in refusing to order an increase in the Florida intrastate rates on fertilizer, said: 'Furthermore, it is not certain that if the Florida intrastate rates were increased to the interstate level, additional revenue would accrue to the carriers, for if the prophesies of the interior plants and of the Florida commission are justified, practically all shipments would be made from the ports with the result that the total charges would probably be no greater than they now are'."

> "the report, read as a whole, sufficiently expresses the conclusion of the Commission, based upon supporting data, including estimates of experienced railroad traffic men, to which the report refers, that the probability of increased revenue was sufficiently great to make the increase of rates a reasonable exercise of sound managerial judgment. This, we think, meets the requirements of the statute."

While at this point we are discussing the matter of findings and not the evidence, we call attention to the fact that under point VI (e) below we deal with the lack of evidence which would justify a conclusion as to an increment in income from increased intrastate rates, pointing out that there was not a single experienced railroad traffic man who attempted to deal with the subject.

The finding of the Commission in the *Second Report* reads (R., 166):

> "While the evidence shows that the existing competition by motor truck is material, and indicates that this means of transportation will be utilized to a greater extent if the intrastate rates are increased, and that therefore, some additional tonnage in all probability will be lost to trucks, or diverted to barge and pipeline movement, the record nevertheless is convincing that the carriers will derive a substantial increase in revenue if the intrastate rates are increased to the interstate basis, and we so find."

Many of the carriers' expenses consist of overhead items, which will not vary with any direct relation to the volume of traffic. It can easily be that the gross revenue *on a particular shipment* will be increased, but that a diminution of the volume handled will result not only in loss of revenues on lost traffic but in such an increase in unit costs on remaining traffic that the carrier will actually have less net money under increased rates than under present rates.

Moreover, the expression above quoted from the Commission's report "and we so find" is a mere conclusion. There

is an utter absence of findings of fact upon which the conclusion could be based.

In the *Florida Case, supra,* the subordinate findings, which this Court held were insufficient to support the order, were described by this Court as follows (page 213):

> "The Commission made a comparison of 'present interstate and intrastate rates and the proposed interstate rates from north Florida in cents per 100 pounds, and the earnings thereunder per car of 50,000 pounds for distances to 170 miles.' The 'earnings' thus set forth were merely the amounts receivable per car for the given number of pounds under the rates for the prescribed distance'."

At page 117 of the *Second Report* (R., 165), the Commission cursorily mentions in one paragraph the evidence of shippers dealing with the prospective diversion of traffic if the intrastate rates be increased and states, (emphasis ours):

> "we are *not convinced* that any substantial proportion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if the rates found reasonable for interstate traffic are applied thereto."

This finding is in substance in the same language as that used by the Commission in the *Georgia Public Service Commission Case* report at page 724, where the Commission said, (emphasis ours):

> "The evidence *is not convincing* that logs could not or would not move from Florida to Georgia if the interstate rates and the Florida intrastate rates were on the same level."

The finding last quoted was held by this Court not to be sufficient to meet the requirements of the statute.

In *State of Florida* v. *United States,* No. 342, October Term, 1933, decided April 2, 1934, Mr. Chief Justice Hughes restated the holding of this Court in the *Florida Case* (282 U. S. 194) as follows (emphasis ours):

> "We observed * * * that in considering the authority of the Commission to enter the state field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question was that of the relation of rates to *income*. But to support the order then under review, the Commission had made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, *additional income* necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service."

It will be noted that, in listing the findings required, this Court referred to at least three, *i. e.*, (1) a finding as to the revenue which had been derived under former rates, (2) a finding as to the revenue which could reasonably be expected under increased intrastate rates, and (3) a finding that the increase in the intrastate rates was likely to produce additional *income* which would remove a burden from the carriers' interstate revenues. It is true that in the *Second Report* in the instant case the Commission comments upon exhibits of carriers which purport to deal with revenues under former as well as increased intrastate rates. There is, however, no definite finding by the Commission that the showing as to revenues made in the carriers' exhibits is a true showing. In fact, the Commission states that the showing of the carriers is predicated on the assumption that all the intrastate traffic would continue to move by rail at the higher rates, and as to this the Commission finds. (R., 165):

> "This is not a fair assumption."

The finding just quoted should be sufficient to dispose of any question as to whether or not the Commission made any finding as to revenue which supports the order.

But it should be especially noted that, in addition to the

requirement of findings of additional revenues, Mr. Chief Justice Hughes distinctly points to the necessity for an additional specific finding relating to the matter of *income*. The *Second Report* of the Commission will be searched in vain for any finding in which the word "income" is used or in which it is stated that additional income will be received so as to remove a burden from the carriers' interstate revenues.

(d) THERE IS NO FINDING THAT THE INTRASTATE RATES AS IN EFFECT PRIOR TO THE ORDER OF THE COMMISSION WERE LESS THAN MAXIMUM REASONABLE RATES.

Another finding which is a necessary prerequisite in support of a valid Section 13 (4) order is that the intrastate rates, the subject of the investigation, are less than reasonable rates, all conditions and circumstances of the transportation considered. As the Commission said in *Virginia Corporation Commission* v. *A. & R. R. Co.*, 136 I. C. C. 173, 180:

> "Plainly we cannot require intrastate rates to be raised above a maximum reasonable level in order to cure a disparity with interstate rates, and where the intrastate rates have been fixed, as they have been here, by the order of a State commission, they can not be increased by the carriers without an order from us."

The same principle is enunciated in *Georgia Public Service Commission* v. *U. S.*, 283 U. S. 765, 770, and in the *Louisiana Surcharge Case*.

There is no finding in the *Second Report* which even touches upon the question of whether the intrastate rates which were the subject of the investigation were less than reasonable or whether the increased intrastate rates would be reasonable. It is true that in the *First Report* there was a finding that increased rates would be reasonable for application to interstate traffic.

There was, however, no affirmative finding in that report that the rates approved as reasonable for interstate traffic would be reasonable when applied to intrastate traffic. Such a finding in the *First Report* would have been a superfluity, inasmuch as the order entered with that report was not addressed to intrastate rates or commerce. The Commission did say in its *First Report* (R. 75):

> "* * * * the record does not disclose any difference in the conditions surrounding the handling of the interstate and intrastate movements."

We have heretofore pointed out that that finding is not the equivalent of an affirmative finding that the intrastate traffic subject to the order is like the interstate traffic within the district. For the same reasons there can not be implied from the statement just quoted a finding of reasonableness directed to the intrastate rates.

In the *Second Report* itself there is no statement by the Commission whatsoever as to the reasonableness or unreasonableness of the intrastate rates. The findings in the *First Report*, confined as they were to interstate commerce, can not be incorporated in the *Second Report* and applied to intrastate commerce except by an affirmative finding that the intrastate traffic is similar, in all respects, to the interstate traffic. The order complained of, being unsupported by a finding as to the reasonableness of the intrastate rates, is void and must be set aside.

It should be made plain that the deficiency in the *Second Report* to which we here point is not within the purview of what this Court said in approving a Section 13 order of the Commission in the *Louisiana Surcharge Case*. In that case the order involved required that there be applied the same surcharges on certain intrastate traffic in Louisiana as had been approved and found reasonable by the Commission for application to interstate traffic in the *Fifteen Per Cent*

Case, 1931, 178 I. C. C. 539, 179 I. C. C. 215. It was argued that the order in that case was invalid because of the absence from the Commission's report of a finding that the application of surcharges to intrastate traffic would result in just and reasonable rates thereon. This Court held that such a finding in a proceeding initiated by the Commission under Section 15a of the Act (approved February 28, 1920, U. S. C. Title 49, Section 15a), was not necessary where the Commission in the first instance made such inquiry and investigation as would enable it to say that the prescribed increases when applied to rates generally would not exceed reasonable maximum. It was further held that in a Section 15a proceeding it was not necessary for the Commission to deal with individual rates. The Court noted in its report dealing with the said rates under Section 13, that the Commission (p. 55) "incorporated the findings bearing on the reasonableness of the increased interstate rates made in the *Fifteen Per Cent Case, 1931.*" It was further found that there was no greater necessity for dealing with individual rates in the state proceeding than there was in the interstate proceeding.

This case, however, is not like the *Louisiana Surcharge Case.* In the first place, the rates there involved did not attach to a particular service, while the contrary is true in the instant case. In that case a uniform surcharge was applied to specified commodities and the general revenue needs of the carriers as a whole, without regard to particular costs on particular traffic, was the prime consideration. In this case the only foundation for any increase in rates, either state or interstate, is found in the *costs* which it is alleged attach to the particular traffic under consideration.

In the second place, in that case the Commission did incorporate in its report in the Section 13 proceeding by specific reference, as this Court found, the finding that the sur-

charges would provide reasonable rates. There is no such incorporation of a prior finding in the Commission's *Second Report* in this case.

If by a strained implication there can be read into the *Second Report*, a finding that intrastate switching rates are less than reasonable, the question then arises as to whether or not that finding is supported by the evidence. With that question we deal hereafter under point VI-a.

(e) THERE IS NO FINDING WHICH DEFINES WHAT INTERSTATE COMMERCE IS BEING DISCRIMINATED AGAINST OR IN WHAT MANNER THE ALLEGED UNJUST DISCRIMINATION OCCURS IN FACT.

The *Second Report* likewise fails to contain a finding defining the interstate commerce which is unjustly discriminated against and burdened by the intrastate switching rates. If it be argued that the burden is upon interstate commerce generally, our reply is that under Section 15a of the Act as it now reads the Commission is no longer empowered to deal with the interstate commerce of the country generally in proceedings brought under Section 13 of the Act, but must confine itself to the interstate commerce of the particular carrier or carriers which are complained of as maintaining the intrastate rate structure which imposes the burden.

If the broad term "interstate commerce" is construed as meaning traffic moving on interstate rates within the switching district, then there is a clear inconsistency because in the same sentence the Commission found that there was no undue prejudice and disadvantage to persons engaged in interstate commerce and no undue prejudice and disadvantage to the localities engaged in such commerce. Within an area so limited as the Chicago switching district it is inconceivable that there could be unjust discrimination against commerce without

there being at the same time unjust discrimination against persons and localities. This is so because with any kind of discrimination there must be a disparity in charges which is not justified by a corresponding difference in transportation circumstances and conditions. If the intrastate rates subject to the order gave no undue advantage to an intrastate shipper or locality with a corresponding disadvantage to an interstate shipper or locality it must follow that there was no unjust discrimination against interstate commerce, considered in the abstract.

Furthermore, there are nowhere in the report findings which define, or particularize the undue burden on interstate commerce which results from lower rates on intrastate than on interstate traffic in the district in the states of Illinois and Indiana. It is true that in Exhibit 105, from which is taken the table on page 114 of the *Second Report* (R., 162), it is shown that for one week in January of 1932 the portion of the whole traffic within the district which moved in *interstate* commerce was less by approximately 4 per cent than the portion, in terms of the whole, which moved in one week of November of 1931, the November week being prior to the increase in the interstate rates and the January week subsequent thereto. The carriers apparently presented the exhibit to prove that the increase in interstate rates without a corresponding increase in state rates has *per se* occasioned a reduction in the relative volume of interstate commerce.

Whatever may have been the purpose for which the exhibit mentioned was introduced, the Commission did not predicate any finding thereon as to discrimination in fact.

In view of the character of the case, the finding which we would expect the Commission to make as to discrimination in fact would be one in which it would be stated in substance that costs and conditions of transportation consid-

ered, the intrastate rates made subject to the order provided less profit to the carriers than the interstate rates, as increased under the *First Report.* It is significant that there is nothing in the report from which such a finding can even be implied.

The *Second Report* leaves us in the dark as to the unjust discrimination in fact which the Commission thought existed.

(f) THERE IS NO FINDING WHICH SEPARATES THE INTRASTATE AND INTERSTATE PROPERTY, REVENUES AND EXPENSES OF THE CARRIERS SO AS TO MAKE IT POSSIBLE TO COMPARE REVENUE WITH COSTS FOR INTRASTATE SWITCHING TRAFFIC CONSIDERED SEPARATELY FROM INTERSTATE SWITCHING TRAFFIC.

The final and fatal deficiency insofar as subordinate findings is concerned, is in the failure of the Commission to find that the intrastate switching rates, when compared with costs of intrastate switching traffic *separately determined and considered,* provide a lesser margin of profit to the carriers than the interstate switching rates when compared with costs of interstate switching traffic *separately determined and considered.*

The Commission definitely found (R., 166) that there was no proof of any undue preference or advantage to persons or localities in intrastate commerce or any undue prejudice against or disadvantage to persons or localities in interstate commerce. Its affirmative finding was limited to the single conclusion that the maintenance of such lower intrastate rates did result and would for the future result in unjust discrimination against interstate commerce. Commerce in the abstract, however, cannot be discriminated and conditions surrounding the transportation considered, against, unless the intrastate commerce, all circumstances is treated more favorably than interstate commerce. Still

dealing with commerce in the abstract, such more favorable treatment, if it exists, must be susceptible of being measured by the relation of revenues to costs. The Commission must find that there is a lesser margin between revenue and costs on intrastate traffic than between revenues and costs on interstate traffic as a prerequisite to finding unjust discrimination against interstate commerce. In the absence of such a prerequisite finding, there is no basis for a Section 13 (4) order predicated solely on unjust discrimination against interstate commerce.

The *Second Report* of the Commission can be searched in vain for any finding which attempts to determine, first, for intrastate traffic, and then separately for interstate traffic, the relation of revenues under any set of rates to the costs as they may attach separately to the intrastate and interstate traffic. Therefore, in the absence of such a finding, the order is without support and must be declared void.

This principle was clearly expressed by this court in *Smith* v. *Illinois Bell Telephone Co.*, 282 U. S. 133, in which was involved an order of the Illinois Commerce Commission prescribing rates for intrastate telephone service in the City of Chicago. One ground asserted by appellants against the decree therein was the failure to make a definite and complete allocation of costs and revenue as between intrastate and interstate business. This court held that a finding making such an allocation was a necessary requisite to a valid decision, saying at page 148:

> "The separation of the intrastate and interstate property, revenues and expenses of the company is important not simply as a theoretical allocation to two branches of the business. It is essential to the appropriate recognition of the competent governmental authority in each field of regulation. * * *"

and on page 149:

> "The proper regulation of rates can be had only by

maintaining the limits of state and federal jurisdiction, and this can not be accomplished unless there are findings of fact underlying the conclusions reached with respect to the exercise of each authority. In view of the questions presented in this case, the validity of the order of the state commission can be suitably tested only by an appropriate determination of the value of the property employed in the intrastate business and of the compensation receivable for the intrastate service under the rates prescribed. *Minnesota Rate Cases* (*Simpson* v. *Shepard*) 230 U. S. 352, 435, 57 L. ed. 1511, 1556, 48 L. R. A. (N. S.) 1151, 33 S. Ct. 729, Ann. Ca. 1916A, 18. As to the value of that property, and as to the revenue and expenses incident to that business, separately considered, there should be specific findings. *Railroad Commission* v. *Maxcy*, 281 U. S. 82, 83, 74 L. ed. 717, 718, 50 S. Ct. 228. * * *"

and again on page 151:

"It is obvious that, unless an apportionment is made, the intrastate service to which the exchange property is allocated will bear an undue burden—to what extent is a matter of controversy."

The instant case is also one in which there must be a finding making an apportionment of *costs* as well as of revenues before the Commission can come to any valid conclusion as to whether state traffic is bearing its fair share of the burden. Otherwise there is no yardstick by which to measure what is fair for state traffic on the one hand and for interstate traffic on the other.

(g) THE EARLIER DECISIONS OF THIS COURT INVOLVING SECTION 13 (4) ORDERS ARE NOT SIMILAR IN THEIR FACTS TO THE INSTANT CASE.

It was argued below by counsel for the United States and the Commission that under the decisions of this court in *Georgia Public Service Commission* v. *U. S.*, 283 U. S. 765; *Alabama* v. *U. S.*, 283 U. S. 776; *Louisiana Public Service Commission* v. *T. & N. O. R. Co.*, 284 U. S. 125 and

Wisconsin Railroad Commission v. *C. B. & Q. R. Co.*, 257 U. S. 563, it is not necessary in a case of this character, for the Commission to make the findings of the nature commented upon in the various subheadings under Point IV above. The cases cited, as well as the *Louisiana Surcharge Case*, are not, however, like the instant case. In the *Georgia Case*, the *Alabama Case*, and the *Louisiana Surcharge Case*, the Section 13 orders contained a definite and specific finding as to discrimination between persons and localities. In such cases the order of the Commission did not need to be buttressed by subordinate findings dealing with prospective net income under increased rates.

The *Louisiana Surcharge Case* was a proceeding wholly under Section 15a of the Act; it involved a uniform emergency surcharge for revenue purposes, and this court found that there was sufficient mention in the Commission's decision of evidence as to added revenues to support the order.

A very important difference between the cases cited and the instant case, particularly insofar as the necessity of findings that the state and interstate traffic are like traffic and that the transportation services performed thereon are under similar circumstances and conditions, rests in the character of the rates involved. In all of the cases mentioned, including the *Florida Case*, the Commission was measuring minimum rates on intrastate traffic by a *mileage scale* of rates on interstate traffic. That in itself rendered it unnecessary for the Commission to examine at any length the possibility of there being a difference between state and interstate traffic in respect to transportation circumstances and conditions. Take the *Wisconsin Case*, for example, in which this court unheld a Section 13 order of the Commission which required that the fare for each mile travelled be 3.6 cents for an intrastate ride, as well as for an interstate ride, part of the latter taking

place within the State of Wisconsin. It is plain on the face of it that when two passengers enter a coach at Milwaukee, Wisconsin, one of them proposing to get off at Kenosha, Wisconsin, and the other at Chicago, Illinois, the service each receives for each mile travelled until the intrastate passenger detrains is identical in every respect. It goes without saying that, being a mileage scale case, the interstate passenger got a greater service outside the state than the intrastate passenger who got off at Kenosha, but that was also to be paid for at a continuation of the mileage scale rate. However, for the ride from Milwaukee to Kenosha during which both passengers were receiving the same service, there can be no question but that, for each of those miles, the cost of transportation, whatever it may be, which attaches to the service rendered is the same per passenger mile. In such a case it necessarily follows that, as related to cost, there is a discrimination as between intrastate traffic, on the one hand, and interstate traffic, on the other, unless the charge for each mile of service is made the same. No cost study, revenue study and no analysis of transportation conditions is required to make this evident. Stated differently, it is plain that the prescription of an equal rate per mile was required in order that the intrastate passenger might contribute per unit of similar service as much toward costs and profits as the interstate passenger.

In the light of the extreme differences between the hauls in this case, for which the Commission has attempted to compel common rates, no similar conclusion can be here drawn.

Furthermore, the fact that the rates involved in the cases just discussed were mileage scale rate cases, rendered it unnecessary for the Commission to make a finding apportioning costs of transportation, investment, etc., as be-

tween intrastate and interstate traffic. Where rates are measured by distance, such rates are thereby proportioned exactly to the service rendered and to the cost of transportation.

V.

The order of the Commission is void because it is indefinite and lacks precision in respect to the carriers subjected to its terms.

By its terms (R., 168b) the order complained of required the respondents before the Commission *"according as they participate in the transportation"* to establish and maintain switching rates on intrastate traffic in the district which should not be less than the rates contemporaneously applied by *"said carriers"* to the transportation *"by them"* of all commodities in interstate switching service. The interstate rates thus fixed as the minima for intrastate traffic were those approved by the Commission in its *First Report*. In that report three different rate bases were provided, dependent upon the number of carriers involved in the service. If but one carrier performed the service the rate approved was 3 cents per hundred pounds, if two carriers joined in performing the service 3.5 cents per hundred pounds, and if more than two carriers joined in performing the service 4 cents per hundred pounds.

The evidence shows, as is stated in the Statement of the Case, that 20 of the respondents before the Commission have no rails in the district outside of the State of Illinois. Consequently, in so far as said respondents are concerned, it is physically impossible for them to engage in a one-line switching haul in interstate commerce, and they do not have in their tariffs an interstate rate applicable to a one-line haul.

As the order reads there is nothing which requires the said 20 carriers to increase the intrastate rates for one-line hauls as to which the Illinois Commission prohibited an increase. If the Commission intended, as it has been alleged it did, to require said carriers to increase their one-line intrastate rates, it could only be done by an order specifying such carriers by terms other than those contained in the order assailed. The lack of such a specification makes the order indefinite and consequently void.

What has just been said likewise applies to rates for two-line hauls in intrastate commerce maintained by carriers which do not have lines in the district outside of the State of Illinois. An example of such a rate is one maintained from a point on the Chicago & North Western Railway to a point on the Chicago, Burlington & Quincy Railroad. In such a case only the Chicago & North Western and the Chicago, Burlington & Quincy participate in the two-line transportation and the transportation is intrastate. The two carriers just named cannot join each other in a rate for a two-line switching haul in interstate commerce in the district. Consequently, according to the terms of the order, no minimum rate is prescribed for an intrastate two-line haul in which the Chicago & North Western and the Chicago, Burlington & Quincy Railroads participate.

The same situation likewise obtains to any three-line haul in which the participating carriers are confined to those whose rails in the district are located wholly within the State of Illinois.

In *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, this Court, in dealing with the order directed to the relation of rates under Section 3 of the Act, held that there must be a common control and responsibility for both the

rate alleged to be unduly prejudicial, as well as the rate alleged to be unduly preferential, before the Commission could issue a valid rate relation order. The observance of the principle of law enunciated in that decision presumably explains the indefiniteness of the order complained of. The Commission was well aware that, in requiring the removal of unjust discrimination, it could not enter a valid order unless the carrier which maintained and charged the rate found to be unjustly discriminatory against interstate commerce likewise maintained and charged the rate alleged to unjustly discriminate in favor of intrastate commerce. The Commission consequently took care to enter an order which in form does not contravene the principle enunciated in the *Texas & Pacific Case*. As a result, however, the order is indefinite when it is sought to be applied to the above described rates of the Chicago and North Western, the Chicago, Burlington & Quincy and the other lines which do not operate rails within the district across the state line.

If it be suggested that the cure for the indefiniteness and lack of precision in the order is by way of application to the Commission for a clarifying order, we point out that such an application raising this precise point was made by the petition of these appellants dated August 15, 1933 (R., 181), and that the Commission by its order of October 4, 1933, denied that petition.

VI.

The order of the Commission is void because there was no evidence upon which the Commission could predicate findings which are necessary to support an order under Section 13 (4) of the Act.

We do not deny that the Commission has the exclusive power to weigh the evidence and make such findings that, in the exercise of its sound discretion, the evidence appears to warrant. Nor do we assert that this Court can weigh the evidence. When, however, the findings are beyond the scope of such sound discretion as applied to the facts of record, when they are plainly arbitrary, or when they are necessarily based upon an assumed set of facts which are not supported by the evidence, a court of equity has the necessary jurisdiction and power to grant the relief sought.

As a matter of law it was necessary that the Commission be convinced by what it considered a fair preponderance of the evidence of the existence of every material fact and to find every fact necessary to sustain the order and the conclusions of fact upon which it is based. While such preponderance of the evidence need not appear to this Court, yet the Commission cannot justify the necessary implication that in its opinion such preponderance of evidence did exist in favor of its findings and order upon every material fact necessary to support them unless there was evidence, which, at the very least, was substantial, tending toward the establishment of every such material fact. When the very evidence upon which the Commission relied to support its conclusions plainly demonstrates the contrary, or when there is an absolute failure of evidence upon a single material fact necessary to its conclusions, this Court must hold that the order is void, since the error then becomes

one of law. *Interstate Commerce Commission* v. *L. & N. R. Co.*, 227 U. S. 88, 92. The respects in which the order fails because there is no substantial evidence is dealt with below.

(a) THERE IS NO EVIDENCE TO SUPPORT A FINDING THAT THE RATES APPROVED ON INTERSTATE SWITCHING TRAFFIC IN THE *FIRST REPORT* ARE JUST AND REASONABLE.

(1) THE COST STUDY DOES NOT PROVIDE SUCH EVIDENCE AND, STANDING ALONE, WAS IN FACT FOUND BY THE COMMISSION TO BE INSUFFICIENT. THAT FINDING OF INSUFFICIENCY WAS WELL JUSTIFIED BY DEMONSTRATED INFIRMITIES IN THE COST STUDY.

Under point IV-(a) and (d) above we deal with the question of whether the Commission made a finding as to the reasonableness of either the interstate or the intrastate rates within the district.

Even if, by a strained construction, the Court is able to find that the Commission did make findings proper in form as to the reasonableness of such rates, we shall now proceed to show that there is no evidence of record which could support such findings, and that, in the absence of such evidence, the order entered in connection with the *Second Report* is void and must be set aside.

The orders entered by the Commission in this proceeding have their foundation, if they have any foundation, in the cost study and nowhere else. This is true as to every subordinate finding which touches upon the matter of reasonableness of rates or upon the matter of relation of revenue under rates to the cost of transporting the traffic to which such rates apply. Confident of their inability so to do, we challenge the appellees to point to any evidence other than the cost study touching upon these matters.

In asserting that the cost study considered alone does not provide a proper index by which to measure the reasonableness of the rates or relation of rates under consideration,

we perhaps need not go farther than the definite and specific finding made by the Commission on page 705 of its *First Report* (R., 69) where it said:

> "We can not, however, accept the cost study as a definite yardstick by which alone to measure the reasonableness of the rates under consideration * * *."

The criticisms of the cost study which the Commission itself recites in its two reports and the deficiencies in the cost study which are pointed out in the opinion of the Illinois Commerce Commission (R., 255) and of the Public Service Commission of Indiana (R., 343) fully support this finding in the *First Report* of the Commission. We shall not undertake in this brief to analyze in detail these deficiencies in the cost study. It is, however, desirable to sketch broadly some of its outstanding defects.

First, it will be noted that although thirty-five carriers engage in switching traffic within the district, all of them being subject to the Commission's order, only fifteen of them participated in the cost study. Such a number might be sufficient if there were some evidence to support a finding that the conditions upon, and the traffic of, the fifteen cost study roads reflected the average for all the roads within the district. There is, however, no such evidence in the record. In fact, the evidence plainly indicates that the conditions on some of the excluded roads were so vastly different from those included within the study that the fifteen manifestly could not reflect an average for the whole thirty-seven. For example, it is shown by Exhibit 9 (R., 466) that the average haul for one-line traffic on the Chicago Junction Railroad in the district in September, 1926, was only 1.6 miles. This was based on an analysis of 1,764 cars which was the largest number of cars handled by any single carrier in switching service in the district during that month with the single exception of the Indiana Harbor Belt. A table contained on page 679 of the *First Report* (R., 43)

shows that for all cars included within the study, both state and interstate, the average distance of the one-line haul was 13.19 miles. On the face of it a study based on roads producing that average is wholly unrepresentative in so far as service on the Chicago Junction is concerned. It will be recalled that the Chicago Junction was not one of the study roads.

That these 15 carriers are not representative is shown by tables as to average hauls on pages 36 and 37 herein, separated as to study and non-study traffic.

As further indicating that the study roads could not possibly be representative, we point to the fact that the Elgin, Joliet & Eastern, which operates extensive mileage outside of the Chicago switching district, was one of the study roads. There were included in the study 7,093 cars handled in one-line service by the Elgin, Joliet & Eastern. Of these, however, 6,854 involved movements outside the district. These E. J. & E. cars moving *outside of the district* on which costs were computed for the purpose of establishing a basis of rates *within the district*, constituted *more than one-half* of the one-line cars of all the 15 carriers embraced in the whole study. (R., 1099; Tr., 2873-4.)

Extremes in particular items as between the roads represented in the cost study must indicate the likelihood of there being similar differences between the average of the fifteen study roads and the entire thirty-seven. The switching costs in the study were based on a computation of engine hour cost, and for the study roads themselves this cost is shown by Exhibit No. 2 as varying from $8.76 per engine hour for engines of the Chicago, Burlington & Quincy engaged in "other than general switching" to $33.33 per engine-hour for engines of the Indiana Harbor Belt engaged in operating the Gibson Hump.

The engine hour cost was reduced to a cost per individual car for a particular service by determining for particular

services the output per engine hour. Exhibit 4 shows that in classification service this output per engine hour ranged from 14.7 cars on the Elgin, Joliet & Eastern to 48.1 cars on the Chicago Short line. In interchange service the extremes were 8.7 cars per engine hour on the Chicago, West Pullman & Southern at West Pullman, to 70.2 cars per engine hour on the Chicago, Milwaukee & St. Paul in Chicago. The extremes in output of cars handled per engine hour at freight houses ranged from 3.7 cars on the Pennsylvania at Colehour to 36.9 cars on the Indiana Harbor Belt.

There is no assurance that the situation on the roads excluded from the cost study fall either within or without these extremes. There is certainly no assurance that the average for the excluded roads is the same as the average for the study roads. The lack of such assurance necessitates the conclusion that there is no evidence to support the implication in the Commission's report that the average costs developed by a study on fifteen roads is approximately the same as the average costs on all thirty-five roads.

In *Florida East Coast R. Co.* v. *United States*, 234 U. S. 167, this Court set aside an order of the Commission which, by its terms, applied to the Florida East Coast Railway among other lines, because the evidence supporting the order was based on transportation circumstances and conditions obtaining on the Atlantic Coast Line and the Seaboard Air Line.

The second important deficiency in the cost study is the limited time embraced therein, being but one week for each of the fifteen carriers in the year 1927. There is no substantial evidence in the record, nor was any attempt made to produce evidence that the conditions in the single week embraced within the study reflected average conditions for that year or for any other year. The Commission itself, in *Boston Wool Trade Assn.* v. *Director General*, 69 I. C. C.

282, at pages 298-9, in which case a similar study was made, extending however over a period eight times as long as in the Chicago case, expressed a similar criticism in the following language:

> "* * * it is obviously dangerous to predicate conclusions upon a short test period which may or may not reflect average conditions. Conditions in switching yards change continually and economy of operation necessitates increase or reduction of the switching force from time to time, with realignment of the work in each case."

A third important defect in the method of the cost study is in using engine hour costs as a base, such costs being computed by spheres or zones of service, and at the same time failing to follow an equal zoning in respect of general operating costs and the investment values which through the channel of engine hour costs were finally brought home to particular movements.

The Saur-Coverston formula has been presented to the Commission and considered by it in a number of cases, and was commented upon by it in various published reports, notably in *Switching at Little Rock*, 140 I. C. C. 583, where the formula was considered in its application for the determination of switching costs. In that case the carriers presented a cost study based, as in this case, upon engine-hour costs, clerical costs, car-maintenance costs, and an item for taxes, rentals and return on investment, omitting items for car rental and the service of classifying the cars incident to switching. There the rate proposed was $7 per car. The cost study showed $6.92 per car without the inclusion of car rental and the service of classifying cars incident to switching. The $6.92 included 88 cents for taxes, rentals and return on investment, making the actual costs $6.04. The Commission considered the method for segregating the operating expenses between the three main items,

switching, clerical and car-maintenance costs, and since the method followed in the *Little Rock Case* so closely approximates the method followed in the instant case, we quote at length from the Commission's decision therein (page 584):

> "In the matter of the assignment and apportionment of the expenses and investment to switching services, the methods used in the cost study were the same as those used in *Switching at Kansas City,* 96 I. C. C. 538. These provide for segregating the operating expenses between (1) switching costs, (2) clerical costs, and (3) car-maintenance costs.
>
> Under the method used for approximating the switching costs, all classes of expenses assigned and apportioned to switching service in the terminal during the test period were aggregated and divided by the total switch-engine hours during that period in all services, including freight service, passenger service, and non-revenue or company switching service. The average switch-engine hour cost thus obtained was assumed to be representative for all classes of switching service. It was then applied to the average time consumed in switching a car in each of the switching zones into which the terminal was divided, and the result was assumed to represent the average cost of switching a car in each of such zones. In approximating the cost of performing a particular switching service, the cars involved were traced through each of the zones through which they passed in both loaded and empty movements, and the average costs of both movements in such zones were then applied and the resulting amounts aggregated and divided by the number of loaded cars to determine the average per car.
>
> This method of approximating switching costs, which is based on the assumption that the cost is directly proportional to the amount of engine time consumed, is subject to the criticism that, inasmuch as many classes of expenses do not vary directly with the amount of engine time consumed in switching, it serves to bring about an inequitable apportionment of such expenses between different services, and results in overcharges to some and undercharges to others. Using for illustration the expenses for maintenance of way and struc-

tures, which are included in the engine-hour cost, if the actual maintenance cost of two groups of tracks is exactly the same, and it requires 10 minutes to switch 10 cars on the first group of tracks, and 30 minutes to switch 10 cars on the second group of tracks due to less favorable track layout or other causes, under this method the average amount of track maintenance per car handled on the second group of tracks would be three times as great as that on the first group, although obviously it should be no greater.

The inclusion of the engine-hour cost of all classes of expenses, other than those involved in car-maintenance costs and clerical costs, has the effect of spreading them over all zones and the cars and switching services using such zones, regardless of the fact that in some instances some of these expenses may not be actually involved at all.

The record in this case, as in other switching studies, shows that a very large proportion of the time consumed in switching between industries and connections is spent in switching at the industry. The record does not show whether the tracks of the industries in Little Rock and North Little Rock are maintained by the industry or by the carrier, but if the industry maintains them, as is generally the case, the obvious effect of including maintenance of way and structures in the engine-hour cost and applying that cost to the large amount of time spent in switching at the industry is to charge the switching in the industry zone with a large expense for track maintenance that is not actually incurred. Inasmuch as the maintenance of way and structures included in the engine-hour cost is based on the total of these expenses actually incurred in the terminal divided by the total engine hours therein, including the time spent in switching on industry tracks, the effect of applying this engine-hour cost to time consumed in switching is to overcharge the switching service in zones where the carrier does not maintain the tracks and to undercharge the switching service in zones where it does maintain the tracks.

The apportionment of the expenses of maintenance of way and structures between switching zones in the terminal on the basis of the amount of engine time

spent therein, instead of actually allocating these expenses to the respective zones according to the location of structures and equated mileage of tracks maintained therein, as might readily have been done, is unsound in principle and inequitable in effect. The tendency of this method is to apportion to some zones, and thereby to the cars and services using such zones, an excessive proportion of the terminal maintenance cost where the amount of engine time in the zone is large by reason of unfavorable track layouts, railroad and street crossings at grade, delays occasioned by waiting for road trains, and other causes which serve to slow down switching operations, and to apportion to other zones, cars, and services, an insufficient share of the terminal maintenance where the amount of engine time is relatively small by reason of conditions favorable to the expeditious performance of switching operations. If all classes of switching service used all zones in the terminal, while this method of dividing the maintenance expenses would still be unsound, they would at least receive equal treatment in the apportionment of these expenses. Inasmuch as the different switching services do not all use the same switching zones, this method results in apportioning too large a share of the maintenance cost to some and too small a share to others."

Another defect in the cost study of some importance is the operating ratio which the carriers applied to the aggregate clerical, car detention and switching costs in order to obtain total costs, including an amount sufficient for taxes, return on investment, etc. The carriers claim, without the use of any operating ratio, a cost for one-line hauls of 1.93 cents, for two-line hauls of 2.38 cents, and for three-line hauls of 2.87 cents, these being claimed as the average for state and interstate traffic. (Exhibits 97 and 83; R., 279.) The carriers use an operating ratio of 66.67 per cent which, when applied, produces total costs or rates for one, two and three-line hauls of 2.9 cents, 3.56 cents and 4.3 cents, respectively. (R., 46.)

The only basis for the use of an operating ratio of 66.67 per cent is the general contention that in the period of the study that ratio was necessary for the country as a whole if all carriers in the United States were to secure enough over and above operating costs to pay taxes and make a proper return on investment. There is, however, no evidence in this record to bring that operating ratio home to the Chicago switching district, and its use is unjustified. However, except by the use of this operating ratio, the carriers, even on the basis of their own figures, are unable to obtain rates which even approach the rates prescribed.

The vice of the Commission's showing on page 54, from which it deduces an operating ratio of 93.14 for 1-line traffic, and as indicating that present rates are "too low", as to which the facts are stated on page 26 of the Statement, lies in the fact that it eliminates certain revenues shown in the study without eliminating or changing the operating expense, and also in the fact that the revenues used in the comparison did not accrue on the *same cars* or traffic for which cost is shown. The carriers' and shippers' showings, set forth on page 682 of the decision (R., 46) as to operating expenses, when compared *with revenues on the same cars,* result in operating ratios as appears in the report of the Illinois Commission (R., 280) for 1-line hauls of 74.52 per cent when based on the carriers' claims and of 59.46 per cent when based on shippers' claims. (R., 281.)

If the Commission had based its computation on the study cars and the average adjustment which gave full effect to the contentions of both the carriers and the shippers (R., 51), it would have arrived at an operating ratio for 1-line hauls of 62.93. (R., 1107-8; Tr., 2895.)

(2) THE COMPARISONS WITH LINE-HAUL RATES IN WIDELY REMOVED TERRITORIES WHICH THE COMMISSION USED AS AN ADDITIONAL TEST OF THE REASONABLENESS OF RATES WERE NOT IN EVIDENCE, NOR WERE THEY SUPPORTED BY EVIDENCE AS TO COMPARABILITY OF CONDITIONS.

We have already disposed of the cost study as constituting evidence that the increased interstate switching rates are just and reasonable, pointing out that the Commission itself found that the cost study, standing alone, would *not* support the finding made as to the reasonableness of the rates considered in the *First Report*. (R., 69.)

The only other matters even touched upon by evidence or in the reports which tend to support a finding of reasonableness are (a) comparisons with switching rates in other switching districts, and (b) comparisons with line-haul rates, the differences, if any, in transportation circumstances and conditions to be considered in both cases.

Dealing first with comparisons with switching rates in other districts as offered in justification of the proposed all-commodity interstate rates, there is not even a mention of any such comparison in the *First Report*. In the *Second Report* two paragraphs on page 101 (R., 149) are devoted to a consideration of switching rates in other districts all of which are stated to be substantially lower than the Chicago district rates. This evidence did not come from the carriers but came from shippers in an endeavor to prove that the increased interstate Chicago rates were excessive. The Commission refused to accord this proof any weight, stating that no cost figures were submitted for the compared districts nor was there any proof as to similarity of average hauls. It consequently is a true statement that the record contains not one syllable of evidence which even slants at supporting the reasonableness of the Chicago district rates by comparisons with switching rates in other districts.

In so far as the comparisons of switching rates with line-haul rates are concerned, differences in circumstances and conditions considered, Appendix B to the *First Report* (R., 77) contains a request by the Commission addressed to the carriers to furnish the following information:

> "(h) What factors make the cost of a switching haul in the Chicago district greater or less than an average road haul of the same length in Illinois or Indiana in the vicinity of Chicago? (Cover only complete local movements and do not include movements in connection with road hauls from or to points without the district.)
>
> (i) Is a local switching haul, as described in the preceding paragraph, of a given length, more or less expensive in the aggregate than a road haul of the same length? Give full data supporting answer."

The carriers introduced no evidence responsive to the Commission's request. The Commission, however, undertook to deal with the subject in four paragraphs on pages 705 and 706 of its *First Report* heretofore quoted on pages 28-9 of this brief. It cannot be successfully contended that these comparisons with line-haul rates constituted a part of the evidence which supported the finding that the approved rates were reasonable.

Comparisons relied upon are with three different *distance scales* of rates, one applying on brick in the southwest, a second applying on sand, gravel, etc., in Arkansas, Louisiana and Texas, and the other applying on iron and steel throughout the length and breadth of official classification territory. All three are line-haul scales and *do not apply on any switching movement*. The record contains no evidence of any sort comparing the costs of or the conditions surrounding the line-haul traffic with the costs of or the conditions surrounding switching traffic except that set forth herein at pages 29-32. The Commission, at page 706 of its *First Report* (R., 70), phrases it thus:

> " * * * the record contains no evidence to indicate that it costs less to handle traffic by switch engine than by road engine for road hauls of similar distances * * *."

At pages 29 to 32 herein we show the evidence negativing the above quotation.

To digress for a moment for the purpose of showing the mischief resulting from the Commission's treatment of these line-haul rate comparisons, let us assume that the case involved rates on sand and gravel, a very low rated commodity, from Chicago to Springfield, and that the entire evidence in the case related to that particular movement. Further let us assume that in some prior decision the Commission had prescribed in the states of Arkansas and Louisiana a distance scale of rates on butter and eggs, much higher rated commodities. In deciding the *Sand and Gravel case* the Commission states that the evidence relating directly to the transportation of sand and gravel is not sufficient on which to predicate a finding and then goes on to say that in the states of Arkansas and Louisiana it had prescribed a distance scale of rates on butter and eggs and that in the record before it there was no evidence to show that it costs less to transport sand and gravel than it costs to transport butter and eggs for a similar distance. Further let us assume that, predicated on the *lack of such evidence* it entered a finding prescribing a minimum rate on sand and gravel and sought to support that finding by comparison with the Southwestern scale on butter and eggs. Manifestly such a finding, as a matter of law, would be set aside by a court of competent jurisdiction. The instant case is on all fours with the case just considered.

We also have another point of law which requires that

this Court reject the comparisons with line-haul rates upon which defendants rely.

The bare comparisons with the line-haul scales which the Commission itself recites are a necessary predicate for its finding, unaccompanied as they were by any comparison of transportation circumstances and conditions, can not, as a matter of law, serve as the base for *any* finding because they were not introduced *in evidence* at the hearings. What the Commission did was to take certain facts from three prior reports and bring such facts forward in its report in this case in support of its order. In *United States* v. *Abilene & S. R. Co.*, 265 U. S. 274, an order of the Commission was enjoined because it was in part based upon data not introduced in evidence at the hearings, this Court saying, at page 288:

> "Nothing can be treated as evidence which is not introduced as such."

This Court pointed out that the objection to basing a finding on data which was not introduced as evidence is not that it is not authentic nor trustworthy, but

> "It is that the carriers were left without notice of the evidence with which they were, in fact, confronted, as later disclosed by the finding made."

If the shippers had had notice of the intention on the part of the Interstate Commerce Commission to rely on comparisons with the three mileage scales mentioned as supporting the finding made, they would have availed themselves of the opportunity of attempting to prove that the conditions and circumstances under which such scales apply are wholly dissimilar from those which obtain in the Chicago switching district. Such proof if offered would have rendered the comparisons valueless. Being deprived of that opportunity by the arbitrary act of the Commission of predicating a finding on data which was not introduced

in evidence takes away from such data any value which it might otherwise have had. This, in itself, renders void an order which is predicated on a finding of reasonableness which in turn needs such data for its support.

In the light of what has just been said it can not be denied that the *only* evidence upon which the Commission could possibly base its finding of reasonableness of rates is the cost study.

Since the Commission rejects the cost study standing alone, and since the additional evidence on which the Commission relies is *not evidence,* it must be concluded that the finding of reasonableness as to the rates involved is unsupported and that the order assailed, which requires support in the evidence, is void.

(b) THERE IS NO EVIDENCE TO SUPPORT A FINDING THAT THE INTRASTATE RATES SUBJECT TO THE ORDER UNJUSTLY DISCRIMINATED AGAINST INTERSTATE COMMERCE.

If unjust discrimination exists, it exists as a fact and is susceptible of proof. Under Point IV (e) above, we have pointed out that there is no finding in the *Second Report* which defines the manner in which the alleged unjust discrimination occurs in fact. It was impossible for the Commission to make such a finding because there is no evidence of record which shows that unjust discrimination in fact exists.

Exhibit 105-A from which is taken the table on page 114 of the *Second Report* (R., 162) was presumably presented for the purpose of showing that the increase in the interstate rates, without a corresponding increase in the intrastate rates, has *per se* occasioned a reduction in the relative volume of interstate commerce. The carriers were presumably of the opinion that the exhibits justified the

conclusion just stated and that such a conclusion constituted proof of unjust discrimination in fact.

No such conclusion nor any other conclusion as to unjust discrimination can be drawn from the exhibit mentioned, because the witness who introduced it offered nothing but the bare figures and did not attempt to show as a fact that the proportionate decrease in the interstate traffic was in anywise due to the lower intrastate rates. (R., 948; Tr., 2171-2.) In connection with this matter it may be noted that on page 679 of the *First Report* (R., 43), it appears that at the time of the September, 1926, traffic study, only 40.29 per cent of the Chicago switching district traffic moved in interstate commerce. If a reduction of 4 per cent as between November and a succeeding January is to be attributable to difference in rates, what can explain the proportionate percentage increase in the interstate traffic as between 1926 and 1931 from 40.29 per cent of the whole to 57.53 per cent of the whole. The answer probably is that the composition of traffic as between state and interstate changes from day to day due to a variety of commercial and competitive conditions, and no one can state, speaking for the district as a whole, what is the precise reason for even a large swing in the relative percentages.

It may be, of course, that in that period from 1926 to 1931 the interstate traffic reflected such a proportionately great increase in percentage of the whole with a corresponding decrease for intrastate traffic, due to the fact that more and more of the intrastate traffic was diverted from the rails to other means of transportation as time went on.

Reverting to the reduction in the proportion of interstate traffic to the whole from 57.53 to 53.25 per cent, as shown in analysis of one week immediately prior to the increase in the interstate rates and one week immediately subsequent to that increase, it is fair to assume that the cause was the

diversion of a larger share of interstate than of intrastate commerce *to competing forms of transportation.* This bears out the prediction made by shippers at the hearings prior to the *First Report* as to the diversion of traffic which would result from an increase in rates. (R. 547, Tr. 340; R. 549, Tr. 348; R. 550, Tr. 349; R. 551, Tr. 356-7; R. 555, Tr. 371; R. 556; Tr. 373-4; R. 563, Tr. 397; R. 601, Tr. 590; R. 617, Tr. 653; R. 631, Tr. 709; R. 635-6, Tr. 726-9; R. 658, Tr. 826; R. 707-8, Tr. 998-1000; R. 711, Tr. 1011-3; R. 713, Tr. 1017; R. 864, Tr. 1593; R. 867, Tr. 1606.)

Between the week of November 9 to 15, 1931, and the week of January 11 to 17, 1932, interstate rates were increased 20 per cent for 1-line hauls, 40 per cent for 2-line hauls and 33⅓ per cent for 3-or-more-line hauls. It is perfectly reasonable to assume that such enormous increases in interstate charges via rail would have the effect of reducing the volume of interstate traffic. The change in percentage of total can in no wise be charged to the substitution of intrastate traffic for interstate rail traffic, but is entirely explained by the diversion of interstate rail traffic to trucks and rail hauls.

It also follows that, it having been shown that subsequent to the increase in interstate rates the volume of interstate declined from 57.53 per cent to 53.25 per cent of the total cars, it cannot be determined what the revenue to the carriers would have been on interstate traffic if the interstate rates had not been increased. It therefore reasonably appears that the computed loss of revenue or discrimination against interstate commerce is fatally defective because of the false assumptions (1) that the volume of interstate traffic was not decreased by the increase in rate, (2) that the intrastate traffic was increased by diversion from interstate to intrastate routes and (3) that increasing the intrastate rate to the interstate level would not cause a

diversion of traffic to trucks, barges, pipe lines or other forms of conveyance.

It may be argued that unjust discrimination in fact against a particular interstate commerce is shown by Exhibit 110, embracing an analysis of some 856 cars, upon which the Commission comments at page 113 of its *Second Report*. (R., 161.) That exhibit purports to show that from and to certain selected points traffic which prior to the interstate advance moved via interstate routes, even though from and to points within the same state, was rerouted so as to move wholly within a single state after the interstate rates were advanced. Practically the whole of this exhibit involves a situation which obtains solely on the Pennsylvania Railroad, and on no other railroad in the district (R., 974; Tr., 2282-3), and results from the fact that its main classification yard for serving industries located in the southern portion of the district on the Illinois side, known as Colehour, is just across the line in the State of Indiana. An inspection of the Official Map of the switching district shows Colehour in Illinois and the record fails to show that in the hearings in the first case the movements between points in Illinois through the Colehour yard were regarded as anything other than intrastate Illinois. That one railroad, according to the evidence, formerly followed the practice of taking a shipment from the Illinois point into this Indiana yard for classification incident to a subsequent movement to an Illinois destination. (R., 974--5; Tr., 2284-5.) The witness who offered this analysis admitted on cross-examination that he had no knowledge of whether this situation, which is peculiar to but one carrier out of the 35 involved in this case, obtained on other roads in the district. (R., 1026; Tr., 2506.) The same witness admitted on cross-examination that he was unable to tell whether the complete movement between Illinois points via intrastate routes,

which the witness termed "unnatural," was more expensive or more costly to the carriers than the complete movement via the interstate route which required a classification service in the State of Indiana. (R., 1025.)

Manifestly, since the entire case of the carriers is predicated on cost, there being no other evidence to sustain the finding as to the level of the rates, a comparison of traffic via interstate routes with traffic via intrastate routes which is not accompanied by a finding as to *relative costs*, constitutes no proof whatsoever of unjust discrimination in fact.

Unjust discrimination in fact might be proven if the intrastate rates made subject to the order provided a lesser margin of profit to the carriers than the interstate rates approved in the *First Report*. Such proof, however, is lacking, and the reason why the carriers were unable to offer it is explained by the fact that the cost study made no separation between intrastate and interstate commerce in respect of the property utilized and the costs incurred.

(c) THERE IS NO EVIDENCE WHICH SEPARATES THE INTRASTATE AND INTERSTATE PROPERTY, REVENUES AND EXPENSES OF THE CARRIERS SO AS TO MAKE IT POSSIBLE TO COMPARE REVENUE WITH COSTS FOR INTRASTATE SWITCHING TRAFFIC CONSIDERED SEPARATELY FROM INTERSTATE SWITCHING TRAFFIC.

Since the order of the Commission is founded on what may be termed a revenue-discrimination basis, it must be supported by evidence which shows that the relation of revenue to costs for intrastate traffic separately considered is different from the relation of revenue to costs on interstate traffic separately considered. And the difference must be in the direction of the intrastate traffic providing a lesser margin of profit than the interstate traffic. It is obvious from the character of the case that unless such evidence were of record before the Commission, there can

be no proper basis for finding that the intrastate rates in effect at the time of the Commission's consideration occasioned unjust discrimination against interstate commerce.

We have heretofore touched upon the absence of any definite finding in the *Second Report* upon this point. The reason why such a definite finding could not be made is that there is no evidence of record which develops separately for intrastate and for interstate traffic the costs attaching directly thereto. The cost study throughout the entire application of the formula treated only with an average of state and interstate traffic. No effort was made to segregate direct costs, indirect costs, or investment values as between state and interstate traffic.

The absence of evidence making such a segregation invalidates the order complained of: *Smith* v. *Illinois Bell Telephone Co., supra,* in which this Court held that such an allocation was a necessary prerequisite.

In this case there is not only a lack of a finding making such an allocation, but there is also a complete lack of evidence to support such a finding if it had been made.

The lack of such evidence leaves us without a yardstick based on costs by which to determine whether the former rates on intrastate traffic did in fact unjustly discriminate against interstate commerce. There is, however, no yardstick, other than costs, even remotely available, since the only test of discrimination which is offered in the reports of the Commission is on a comparison of rates with costs.

The absence of evidence making the segregation, rendered it impossible for the Commission, even if it desired to do so, to make a separation and allocation of costs and of use of property which, according to the decision of this Court in the *Smith Case, supra,* is necessary whenever both state and interstate traffic are involved.

(d) THERE IS NO EVIDENCE TO SUPPORT A FINDING THAT THE INTRASTATE TRAFFIC SUBJECT TO THE ORDER IS SIMILAR TO THE INTERSTATE TRAFFIC IN THE DISTRICT IN RESPECT TO (1) COST OF SERVICE, (2) KIND OF TRAFFIC, (3) THE CARRIERS PERFORMING THE SERVICE, AND (4) THE CONDITIONS AND CIRCUMSTANCES SURROUNDING THE SERVICE.

In the course of our argument under Point IV(b) above, we developed the reasons why a valid order may not be entered under Section 13-(4) of the Act in the absence of a finding that the intrastate service for which the minimum rate is prescribed is a like and contemporaneous service rendered under substantially similar circumstances and conditions as the interstate service rendered in the interstate commerce found to be unjustly discriminated against.

Under that same point we discuss the findings which the Commission did make in its *First* and *Second Reports* to show that none of them is the equivalent of a definite and affirmative finding of the character just mentioned. The Commission was unable to make a plain, definite and unambiguous finding in respect to this matter since the evidence plainly shows that the intrastate traffic is not like the interstate traffic and that the intrastate service was rendered under dissimilar circumstances and conditions in various particulars: First, there are substantial differences between the state and interstate traffic in respect to the kind and composition of the traffic. Exhibit 7-(a), commented upon at page 38 above, shows that there are numerous commodities handled in one-line service in intrastate commerce which are not handled in one-line service in interstate commerce. Consequently, the traffic is not like traffic.

There are also important and controlling differences as between the carriers who perform intrastate service and those who perform interstate service. This has been com-

mented upon extensively elsewhere herein, and results from the fact that twenty of the carriers operating within the district have no lines therein which cross the state line. Consequently, in so far as service on their individual lines is concerned, as well as in so far as service jointly of any two or more of them is concerned, no traffic can be handled in the district in interstate commerce.

This Court held in *Florida East Coast R. Co.* v. *United States*, 234 U. S. 167, that evidence bearing upon the service and rates on one line in a general area will not serve to support a mandatory order directed to rates on another line in the same area in the absence of evidence relating to the service on the second line. In that case an order of the Commission prescribing certain gathering rates in Florida on citrus fruits and vegetables was predicated upon evidence as to conditions on the lines of the Atlantic Coast Line and the Seaboard Air Line. No evidence was presented as to conditions on the line of the Florida East Coast Railway and the operation of the order upon the rates of the latter carrier was enjoined, on the ground that as to the service and rates of the Florida East Coast there was no evidence whatsoever to support the order.

In so far as the finding in this case as to similarity of conditions is concerned, there is a like absence of evidence, and the section 13 order to which that finding is a necessary prerequisite is consequently invalid.

Even more important, however, as a distinguishing circumstance between the state and the interstate service is the fact that the average lengths of haul and other circumstances of transportation which bear directly upon costs are not the same for the commerce which is handled intrastate within the district as for the commerce which is handled interstate within the district. Taking the intrastate commerce in Illinois, for example, we have shown elsewhere

herein that the average haul on one-line shipments is but 48 per cent of the average haul on interstate shipments. For two-line shipments the average haul is 55 per cent and for three-line hauls 68 per cent.

These differences in average hauls are of great significance and their significance is not impaired by any finding made by the Commission. It is true that on page 118 of the *Second Report* (R., 166) the Commission stated:

> "We further find that the transportation conditions throughout the Chicago switching district are substantially similar."

Obviously, in so far as average lengths of haul are concerned, that finding is not supported by, but is directly contrary to, the evidence.

A statement that the length of haul in switching service is of little importance and is not controlling means nothing because there is no evidence of record to show that the cost of switching service is the same for a haul of 15 miles as it is for a haul of 7 miles.

The whole basis for the cost study made by the carriers rests on the time required to perform a given service, and as stated, that time was computed for the average of state and interstate traffic without segregation between them. Since time is the foundation for the computed and claimed cost, there must obviously be a greater cost on two-line hauls in handling an interstate car an average distance of 28.7 miles than the handling of an Illinois intrastate car an average of 15.8 miles and an Indiana intrastate car an average of 7.2 miles, unless the miracle happens of a train starting from point A and arriving at one and the same time at point B, 7.2 miles distant, at point C, 15.8 miles distant, and at point D, 28.7 miles distant.

While the Commission ignores distance in arriving at a

lawful relation of rates, yet the very two reports under consideration indicate that it still holds to the belief, which is a proper one, that a difference in distance results in a difference in costs and justifies a difference in rates even in switching service. For example, at page 697 of the *First Report* (R., 61), the Commission approves the exclusion of the Chicago Junction from the cost study on the ground that the average length of haul on that carrier was not comparable with the average length of haul on other lines within the district.

At page 113 of the *Second Report* (R., 161), in discussing a carrier exhibit analyzing the routes traveled by some 856 cars, the Commission said (italics ours):

> "On cross-examination it developed that a considerable haul, in several instances amounting to approximately 20 miles, in connection with the so-called natural or interstate routes, could be saved by the use of more advantageously located interchange connections. A number of such movements were pointed out, and in those cases what was the natural haul over an interstate route would become the shorter haul via an intrastate route, and would involve *the most economical movement.*"

In that portion of the *Second Report* which dealt with the formal complaint, the Commission rejected comparisons by shippers with substantially lower switching rates in other districts (R., 149), on the ground that no attempt was "made to compare the average hauls in those districts with the average hauls within the Chicago district," and it was implied that lower switching rates approved in Detroit in *Increased Switching Charges at Detroit*, 91 I. C. C. 82, were justified by the fact that the average haul in the Detroit district was shown to be about eight miles. That average haul is longer than the one-line average haul intrastate in either Illinois or Indiana in the Chicago district. (See p. 37 above.)

In its *First Report* the Commission, as is elsewhere noted herein, sought to support its finding as to the reasonableness of the interstate rates approved, by comparisons with certain line-haul rates and at page 706 (R., 70) the Commission relied on the fact that the rates with which comparisons were made applied for "similar distances."

It is unfortunate that the carriers did not segregate intrastate from interstate traffic in their development of the switching costs claimed. If they had done so it is certain that the state traffic, moving as it does for average hauls substantially shorter than the interstate traffic, would exhibit a correspondingly lower cost. As to some items of cost the statement just made can be easily demonstrated.

In so far as direct costs such as labor and the expense of operating an engine is concerned, a contention that the cost of a 28-mile operation is no greater than the cost of a 15-mile operation runs counter to common experience. Under some peculiar circumstances it might be possible, but there is no evidence which translates the possibility into a proven fact.

The following table, taken from page 22 of Exhibit 120, will give the Court an idea as to the amount of investment in land and tracks *per mile* for carriers within the district:

INVESTMENT PER MILE.

Carrier	Land	Tracks	All road, except land	All road, including land
B. & O. C. T.	$56,300	$28,900	$44,700	$101,000
Belt Ry.	12,900	25,400	32,400	45,300
I. H. B. R. R. Co.	5,200	14,300	20,200	25,400
C. R. & I. and C. J.	116,000	24,700	33,200	149,200
C. & I. W. R. R. Co.	16,700	22,400	23,000	39,700
C. S. L. Ry. Co.	20,100	14,700	29,900	50,000
C. W. P. & S. R. R. Co.	14,100	13,500	23,700	37,800
I. N. Ry. Co.	42,300	40,200	49,100	91,400
Pullman R. R.	13,500	9,900	14,200	27,700
C. & W. I. R. R. Co.	62,300	46,900	68,200	130,500

A consideration of the foregoing data clearly indicates the extent to which additional hauls for interstate traffic over the hauls in intrastate traffic require the use of large investments in land and tracks for each mile in the excess portion of the haul.

That the cost of the 28-mile operation in fact exceeds the cost of the 15-mile operation is even more evident when we consider those items of expense which are incurred by reason of roadway maintenance. The method used by the carriers for computing costs, brought into their engine-hour costs the expense of maintaining track and roadway over which such engines operated. The application of the operating ratio brought into the total costs the element of return on investment and taxes on such track and roadway which is 33 per cent of the total costs. (R., 50.) Both of these elements of cost must necessarily in so far as any particular movement or the average of a group of movements is concerned, be directly related to the distance over which a particular shipment might move. Consequently, these items of cost on a shipment handled for 28 miles would necessarily be almost twice as great as similar items of cost attaching to a shipment moving only 15 miles. The effect of the Commission's decision, however, is to ignore *in toto* such differences in cost.

However, a relation of rates is not and can not become unlawful unless the relation of rates is improperly proportioned to the relation of the services rendered. This is true whether we are dealing with unjust discrimination under Section 13, unjust discrimination under Section 2, or undue preference and prejudice under Section 3. While the precise subject matter may be different in cases arising under these three sections, they all involve the relation of rates to service and under all three of these sections the relation of rates must be tested by the transportation standard and the transportation standard alone.

In *United States* v. *Illinois Central R. R. Co.*, 263 U. S. 515, at page 524, this Court said:

> "To bring a difference in rates within the prohibition of Section 3, it must be shown that the discrimination practiced is unjust when measured by the transportation standard. In other words, the difference in rates cannot be held illegal unless it is shown that it is not justified by the cost of the respective services, by their values, or by other transportation conditions."

In *Interstate Commerce Commission* v. *B. & O. R. R. Co.*, 145 U. S. 263, this Court after citing numerous decisions, said (page 284):

> "In short, the substance of all these decisions is that railway companies are only bound to give the same terms to all persons alike under the same conditions and circumstances, and that any fact which produces an inequality of condition and a change of circumstances justifies an inequality of charge."

If the transportation standard is the only proper standard for measuring an alleged discrimination under Section 3, and that means that a difference in rates is excused by a difference in the circumstances and conditions surrounding the services for which such rates apply, then the transportation standard is the only proper standard for measuring discrimination under Section 13. To hold otherwise would leave us without any test or yardstick at all by which to determine the cases in which it is lawful and right to require the maintenance of the same rates on intrastate commerce as may be contemporaneously maintained on interstate commerce.

If it were not for the fact that the interstate rates constitute the only standard which the Commission has erected in this case for determining what should be minimum intrastate rates, the matter of similarity or dissimilarity of transportation conditions would not be of such great importance. That is, if the order in this case were predicated

on a finding that the state rates considered of and by themselves were so low as to be less than compensatory, and if in such a case another finding were made that an increase in such rates to a specified compensatory basis might reasonably be expected to yield the carriers greater net revenues to the point where the state traffic would be paying its proportionate, fair share of transportation costs, we would have an entirely different situation. This, however, is not that kind of a case. The Commission made no finding as to the relationship between revenue and cost in respect to the intrastate traffic considered by itself and on its own merits. Such a finding was impossible on this record, because the cost study did not state separately the unit costs on state and interstate traffic.

The Commission, in its *First Report* in this proceeding, approved what purported to be reasonable rates on interstate traffic and necessarily confined itself to those facts which related to interstate traffic. In its *Second Report* it has found that minimum rates on state traffic should be at the level approved as maximum on interstate traffic. **Stated differently, it has used maximum interstate rates as its yardstick for minimum intrastate rates.** Under such circumstances its action is arbitrary and without foundation in the evidence unless it appears that the service rendered on the intrastate traffic is substantially similar to the service rendered on interstate traffic.

If it could be contended that the maximum interstate rates, as fixed by the *First Report*, were based solely on interstate costs, conditions and revenues, then it follows without argument that such interstate costs, conditions and revenues formed the sole basis of the *Second Report* fixing minimum intrastate rates and that the very elements which affect intrastate traffic, viz., intrastate costs, conditions and revenues, were not even considered, and as a result we

would have the *maximum* rates for the admittedly greater and, therefore, more expensive interstate service becoming the *minimum* rates for the less costly intrastate service.

(e) THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT A FINDING THAT THE INCREASE IN THE INTRASTATE RATES TO THE INTERSTATE BASIS WOULD IMPROVE THE POSITION OF THE APPELLEE CARRIERS IN SO FAR AS ADDITIONAL INCOME IS CONCERNED.

At pages 46-57 of our Statement we summarize the evidence which shows that the effect of increasing the intrastate rates would be to deprive the carriers of traffic providing substantial revenues, so that in the end the rate increase would result in smaller rather than greater revenues from such business. In respect of this evidence, the Commission at page 118 of its *Second Report* (R., 166) said:

> "While the evidence shows that the existing competition by motor truck is material, and indicates that this means of transportation will be utilized to a greater extent if the intrastate rates are increased, and that therefore, some additional tonnage in all probability will be lost to trucks, or diverted to barge and pipe-line movement, the record nevertheless is convincing that the carriers will derive a substantial increase in revenue if the intrastate rates are increased to the interstate basis, and we so find."

We respectfully submit that there is no evidence upon which the Commission could predicate the statement with which it concludes the above finding. There was not a single carrier witness who undertook to show what the effect would be on carriers' revenues of the diversion of traffic as to which the shippers testified. In the absence of such evidence the finding of the Commission above quoted is based on pure assumption and can not serve to support the order.

Elsewhere we have shown the testimony of the shippers

all of which was to the effect that increasing the intrastate rates would result in a decrease in revenue. Moreover, the two skilled and able Examiners who heard the testimony in the case found, as shown in their proposed report (R., 134), as follows:

> "The record does not indicate that an increase in the intrastate rates to the level of the interstate rates would result in increased revenues to the carriers. The testimony shows that the existing competition by motor truck is material, and indicates that this means of transportation will be utilized to a greater extent if the intrastate rates are increased, and also that some tonnage would be diverted to barges and pipe lines. Furthermore, the preponderance of the intra-district movements is intrastate, and there is but a slight margin between the existing intrastate and interstate rates. Certain of the intrastate rates, due to exceptions to the Lowrey basis, are on a higher level than the present interstate rates. The carriers show the difference between the total revenues which would be derived if the existing intrastate rates and the interstate rates were applied to the same volume of traffic. They rested their case primarily upon this showing to prove a violation of Section 13. But this is neither convincing nor adequate proof that an increase in the intrastate rates to the interstate basis would result in an increase in total revenue as there are present the other factors mentioned above which would tend to decrease the volume of traffic sufficiently at least to offset any additional revenue which otherwise might be gained by an increase in the rates."

After pointing out as above that the record did not even indicate that an increase in the intrastate rates to the level of the interstate rates would result in increased revenues to the carriers, the Examiners made the following recommendation (R., 134-5):

> "The commission should find that the maintenance of intrastate rates and carload minimum weights on a lower basis than the corresponding rates and minimum weights, found not unreasonable and approved for in-

> terstate transportation in switching service, has not been shown to result in unjust discrimination against interstate commerce or in undue preference and advantage of persons and localities in intrastate commerce nor in undue prejudice and disadvantage to persons and localities in interstate commerce."

Where is the evidence which "convinced" the Commission to take a contrary view of what the Examiners found? Let opposing counsel point to the page on which it can be found!

As noted in the statement (pages 39-42 above), the record purports to contain two analyses which relate to the revenue which would accrue under increased intrastate rates. These analyses are summarized at page 116 of the *Second Report*. (R., 164.)

The first of these is the constructive application of the increased interstate rates to the intrastate traffic handled at the time of the September, 1926, traffic count. That analysis adds nothing to the record because it is nothing more than a statement of the *gross* revenues which would have accrued *if* traffic moving more than 7 years ago were now moving and *if* certain rates were applied thereto. Obviously the analysis does not touch upon prospective revenues in 1932, or 1933.

The carriers also took the traffic in one week of November, 1931, and one week of January, 1932, for the purpose of making a similar constructive application of interstate rates to intrastate shipments. These computations are in the same category as those just discussed except for the difference as to the period. They afford no information as to prospective income.

We already know that the difference between the 1-line intrastate rate of 2.5 cents and the 1-line interstate rate of 3 cents is one-half cent and that on a 60,000 pound minimum car that difference will amount to $3. If it be assumed

that during a given year 500,000 cars will move in 1-line hauls in interstate commerce that difference, as applied thereto, would result in a difference in gross revenue of $1,500,000. When all is said and done, however, the only concrete fact which this demonstrates is that the difference between the intrastate rates and interstate rates on 1-line hauls amounts to one-half cent per 100 pounds. The arithmetical computations upon which the Commission comments add nothing to the fact just stated.

In the report of the Commission on which was based the order set aside in *Florida* v. *United States*, 282 U. S. 194 (*Georgia Public Service Commission* v. *A. C. L. R. Co.*, 146 I. C. C. 717), a statistical table was inserted to show, dependent upon the length of the haul, the differences between the state rates found to be unjustly discriminatory and the interstate rates fixed as a minimum based on state traffic for the future. This Court held that the table mentioned did not constitute a sufficient finding in respect to the earning which the carriers might be expected to derive in the event the state rates were increased to the interstate level. However, in the *Second Report* in this case, the Commission in substance did no more than it did in the *Georgia Public Service Commission case*, *supra*, and its inability to make a more specific or definite finding was due to the failure of the carriers' proof.

(f) THERE IS NO EVIDENCE TO SUPPORT THE FINDING THAT THE UNJUST DISCRIMINATION AGAINST INTERSTATE COMMERCE FOUND TO EXIST WAS OCCASIONED BY THE SAME CARRIERS WHO MAINTAINED THE INTRASTATE RATES WHICH UNJUSTLY DISCRIMINATED IN FAVOR OF INTRASTATE TRAFFIC.

The point to which we now address ourselves rests on a set of facts heretofore dealt with from other standpoints, *i. e.*, that twenty of the thirty-five carriers in the district

do not operate rails within the district which cross the state line. Among such lines, for example, is the Chicago & North Western Railway, which operates largely in the extreme northwestern corner of the district. The order sought to be enjoined purports to require that the Chicago & North Western charges as a minimum on its one-line hauls the rates approved as maximum for the interstate one-line hauls on the lines of the eight carriers who do operate across the state line, as, for example, the line of the Pennsylvania, whose lines are largely in the southern half of the district. Clearly, however, the Chicago & North Western is not responsible for the one-line rates of the Pennsylvania, nor is the Pennsylvania in control of or responsible for the one-line rates of the Chicago & North Western. Since an order directed to unjust discrimination operates *upon a relation of rates*, the carrier against whom it is directed must have in its control both the rate alleged to be too high and the rate alleged to be too low. In the absence of such a common control an order directed to the relation of rates is void and must be set aside. Such was the recent holding of this Court in *Texas & Pacific R. Co. v. United States*, 289 U. S. 627, in which an order directed to the relationship of rates between New Orleans and Galveston, on the one hand, and interior points, on the other, was set aside in so far as the Texas & Pacific Railroad is concerned due to the fact that the Texas & Pacific was not responsible for and did not control the rates to both New Orleans and Galveston.

As is shown in the tariffs listed in Appendix "I" to the bill of complaint, (R., 419.), the Chicago and North Western Railway and the other lines which operate within the district exclusively in the State of Illinois, have relied upon the order complained of as their authority for disregarding the findings and orders of the Illinois and Indiana com-

missions. Their action in so doing is lawful only if the order of the Commission complained of is lawful.

In order to make our point let us assume that the Chicago and North Western had declined to increase its switching rates within the district for 1-line hauls and a suit was brought to compel it so to do. That carrier then defends on the ground that as to its 1-line rates there could be no discrimination in fact against interstate commerce because it neither controlled nor maintained any 1-line interstate rate for switching service within the district. Do counsel for appellees contend that the Chicago and North Western could not successfully defend against the order on the ground stated? Unless they do so contend, they must admit that the order complained of is invalid as applied to the 1-line rates of those carriers who do not engage in 1-line hauls of interstate commerce within the district.

VII.

The order of the Commission holding that the intrastate rates on grain switching constituted discrimination against interstate commerce is void for the following reasons:

(A) IT IS BASED ON ITS FORMER ORDER OF JULY 31, 1931, WHICH WAS VOID BECAUSE THERE WAS NO SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT A FINDING JUSTIFYING ANY INCREASES IN THE THEN EXISTING INTERSTATE GRAIN SWITCHING RATES;

(B) IT WAS BASED UPON A MISCONCEPTION OF THE ISSUES INVOLVED WITH RESPECT TO THE GRAIN SWITCHING RATES AND A MISINTERPRETATION OF THE POWERS DELEGATED TO IT BY THE INTERSTATE COMMERCE ACT AND WAS IN DIRECT VIOLATION OF SECTION 15 (7) OF THE INTERSTATE COMMERCE ACT.

(A)

The finding of the Commission in the 13th Section case (R., 166) that the lower intrastate rates result in unjust discrimination against interstate commerce is by its terms predicated upon the Commission's previous finding (R., 76) that the 3, 3.5, and 4-cent rates (minimum 60,000 pounds) for 1-line, 2-line, and 3-or-more-lines, respectively, were not, and would not for the future be, unreasonable for application on all of the commodities switched within the Chicago district, except railway equipment on its own wheels. We have already pointed out (*ante*, pp. 95-98) that there was no finding (as there should have been) that the intrastate switching rates were less than just and reasonable rates. It therefore follows of necessity that if the order of the Commission of July 31, 1931, based on its finding that the interstate switching rates approved by it for interstate transportation in switching service, was void, then the whole case must fall of its own weight.

It is our contention that the Commission's order of July 31, 1931, as to the grain switching rates was void because there was no substantial evidence in the record to support the finding upon which it was based.

Not a single witness for any individual railroad testified at any of the hearings in justification of any increases in the grain switching rates. (R., 477; Tr., 116.) This is an extremely important fact. Prior to the Commission's order, the grain switching rates within the Chicago switching district were not joint rates. (R., 694; Tr., 946.) Each individual railroad published its own per car rates in its own tariff, and the switching rates of the different railroads were not uniform in amount, but varied in amount as to each railroad and as to the character of the service via each railroad, whether inbound or outbound to or from connecting lines of railroad and elevators or mills, or where the complete switching service from one elevator or mill to another was performed by a single railroad. The switching rate published by each individual carrier accorded with the particular operating and physical conditions of its railroad. (*Ante*, p. 33.) Where more than one line of railroad was involved in a switching movement, the total charge assessed was ascertained by adding together the individual rates of each railroad and such joint haul switching rates on grain do not come within the terms of the Lowrey switching tariffs which are published for account of all the railroads in one tariff by Agent C. W. Galligan, who was the principal spokesman for all the railroads at the hearing. Witness Galligan, therefore, was not qualified to speak for the individual carriers with respect to their individual grain switching rates, and he, as joint agent for the publication of the Lowrey tariffs, did not claim to have any knowledge of the varying transportation conditions of the individual railroads which pub-

lished single-line grain switching rates. (R., 762, 763; Tr., 1225.)

In order to ascertain the reasonableness of any particular grain switching rate of any individual carrier or carriers within the Chicago switching district, it is necessary to examine into the circumstances and conditions surrounding the grain switching traffic via each line, and we contend that the cost study representing a composite statement or average of switching rates throughout the Chicago switching district on 69 groups of commodities, is not a test either of the cost of or reasonableness of the grain switching rate of any individual carrier.

Grain having been carried as an exception to the all-commodity basis from the date of the Lowrey agreement continuously for approximately twenty years, and no witness for any railroad having testified as to the justification for any increases in its separately published grain switching rate, the only other evidence which could even remotely tend to justify increases in these individual per-car grain switching rates was the cost study. Elsewhere in this brief (*ante*, pp. 109-117) we have fully discussed the imperfections of the cost study and its inadequacy as evidence upon which the Commission could make a finding as to the reasonableness or unreasonablenes of all-commodity switching rates, intrastate or interstate, in the Chicago switching district.

In addition to what has already been said herein with respect to this cost study, it could not in our opinion have any possible bearing upon the reasonableness or unreasonableness of grain switching rates, either interstate or intrastate, within the Chicago switching district, for the following reasons:

(1) It was definitely stated by Witness Galligan that "The cost study and exhibits filed in connection therewith were considered by the carriers as justifying the rates

that they had published and filed and that are now under suspension'' (R., 477; Tr., 115) *i. e.*, the rates contained in the Lowrey tariffs. No tariffs had ever been published and filed with either the Interstate or State Commissions, naming increased switching rates on grain, and consequently none was under suspension. (R., 678; Tr., 906.) In addition to this, as the Commission itself pointed out in its first report (R., 56), ''The carriers' proposed adjustment originally did not include the rates on grain, but at the later hearings a general readjustment of these rates to the full all-commodity basis was proposed.'' The mere proposal, however, of the railroads (after the hearings commenced) without evidence to support it, was insufficient to justify increases in the grain switching rates.

(2) The railroads themselves did not consider the cost study as evidence to justify increases in the grain rates, because, as explained, the individually published per-car grain switching rates, varying in amount on the different lines of railroads and varying according to the character of services performed, had been in effect continuously for many years, and although the cost study had been completed (pursuant to the Commission's order of May 25, 1927) before the hearing commenced in Docket 19610, the carriers did not at that time (January 11, 1928) propose any increases in the grain switching rates. (R., 475; Tr., 108, 109.) Obviously, had the railroads themselves considered the cost study as justification for proposed increases in the grain switching rates, they would have made their proposal at the time of the first hearing because at that time they had in their possession all the information as to costs developed by the cost study.

(3) At no time during the entire period of these protracted proceedings did any of the individual railroads file any tariffs with either the Illinois or Indiana State

Commissions, proposing to increase the intrastate grain switching rates within Illinois or within Indiana. (R., 332, 1091, 1118; Tr., 2844, 2931.) We urge that this is an important point to be considered in this case because of the fact that all of the information derived from the cost study was in the possession of the carriers prior to the first hearing (January 11, 1928) and because of the further fact that the great preponderance of the grain switching movement within the Chicago switching district, is entirely within the State of Illinois. (R., 683; Tr., 917.) Had the carriers filed tariffs with the Illinois and Indiana State Commissions, proposing to increase the intrastate grain switching rates, these commissions would have been given the opportunity to determine for themselves the reasonableness of said proposed increases. In this connection it should be borne in mind, as was said by this Court in *Florida* v. *United States*, 282 U. S. 194, at page 214:

> "The authority to determine the reasonableness *per se* of the intrastate rates lay with the State authorities and not with the Interstate Commerce Commission."

(4) The rate comparisons cited by the Commission in its report are not evidence in this case and cannot support the finding. (See *ante*, pp. 118-122.)

In its original report (R., 69) the Commission stated that it could not accept the cost study as a definite yardstick by which alone to measure the reasonableness of the rates under consideration, but in addition must apply other tests to determine their reasonableness. The other tests which it applied were not founded upon any evidence in the record in this case, but were merely comments upon certain former decisions of the Commission wherein it had prescribed distance scale rates on various commodities, including brick and related articles; sand, gravel, crushed stone, iron, steel, etc.

These comparisons not only were not evidence but their inclusion in the report was directly in conflict with the rule laid down by this Court in *United States* v. *Abilene & S. R. Co.*, 265 U. S. 274, at page 288, wherein it said (L. ed. page 1023): "Nothing can be treated as evidence which is not introduced as such." In that case this Court set aside an order of the Interstate Commerce Commission because its finding was predicated upon data taken from the annual reports filed pursuant to law with the Commission by the plaintiff carriers, and these annual reports were not formally put in evidence.

What we have said with respect to the cost study does not go to the weight of the evidence, but to the absence of it. This Court has definitely decided, that it will not substitute its judgment for that of the Commission as to the facts in the case, where there is substantial evidence to support a finding of the Commission. Our position is that the cost study is not substantial evidence to justify any increases in the grain switching rates. Upon this point we believe that the case of *Florida East Coast Ry. Co.* v. *U. S.*, 234 U. S. 167, is controlling. In that case this Court reversed the decree of the Commerce Court, upholding an order of the Interstate Commerce Commission, reducing certain rates on citrus fruits and vegetables on the Florida East Coast Line. There was testimony in the record with reference to the Atlantic Coast Line and the Seaboard Air Line (but none as to the East Coast Line), to the effect that on those roads there was a saving in expense and an increase in earning capacity because of the fact that carload shipments had greatly increased, and on account of heavier loading, and this Court, speaking through Mr. Chief Justice White, said on page 187:

> "Thus, by analysis, the case comes to this: Did the facts as to the increased loading which the Commission found to exist in the case of the Seaboard Air

> Line and the Atlantic Coast Line support or tend to support the order as to the East Coast Line in the absence of all testimony in the record concerning the existence of such fact as to the traffic on that road? In other words, the question is, Because there was testimony as to the traffic of those roads, can such testimony be said to tend to establish the same condition on the East Coast Line? Conceding that, from an abstract point of view, an affirmative answer would have to be given to such question, we think such is not the case here for the following reasons: (a) because of the difference in business carried on by the two roads named and the East Coast Line, they being not only gatherers of the local product, but trunk line carriers; (b) because of the difference in the situation and traffic of the two trunk lines named and the East Coast Line, as deduced solely from the peculiar environment and movement of business on that road so aptly stated in the passages from the reports of the Commission which we have quoted."

Applying the ruling of the above case to the case at bar, did the facts as to the cost study of commodities generally, which by the carriers' admission was considered by them as justifying solely the rates under suspension (R., 477; Tr., 115) support or tend to support the reasonableness of varying individual grain switching rates in the absence of all testimony in the record concerning the transportation conditions surrounding the grain switching movement, bearing in mind that the grain switching rates from the very beginning had been carried as an exception to the all-commodity Lowrey basis?

(B)

The order of the Commission of July 31, 1931, was based upon a misconception of the issues involved with respect to the grain switching rates and a misconstruction of the powers delegated to it by the Interstate Commerce Act.

The sole issue before the Commission with respect to

the grain switching rates was whether or not the carriers had sustained the burden of proof imposed upon them by Section 15 (7) of the Interstate Commerce Act and had justified the increases.

The case was tried by the railroads upon the theory that all that was required of them was to prove what should be a general basis of rates throughout the Chicago switching district, and if any individual road had commodities which it desired to be excepted from the general basis it was incumbent upon that individual road to show that such excepted commodity should be treated differently from the general basis. A definite statement to that effect was made by counsel for the carriers. After counsel had made this statement, Mr. Slater, representing the Illinois Commerce Commission, aptly replied that this proposition of the carriers would shift the burden from the carriers back to the shippers. (R., 765; Tr., 1232.)

This mistaken conception of the issues involved was shared both by the presiding Commissioner and the presiding Examiner. Chairman Campbell made the following statement (R., 764, 5; Tr., 1230):

> "The point is. You propose a Lowrey basis; propose to increase all rates as [up] to the Lowrey basis except where you make exceptions. If you make these exceptions without showing any reason, can the Commission recognize those exceptions or should it not use such exceptions for the purpose of showing that you have not justified the increase on other commodities. That is the point."

And Examiner Faul said (R., 763; Tr., 1226):

> "Well, I am asking for general information from this standpoint. Suppose, when the Commission comes to decide this case it should determine to put all commodities under the Lowrey basis and it had no testimony on some one particular commodity that you propose to except, it would require some testimony and it seems to me we should have some before we can

except any one particular commodity if you are going to have a general Lowrey basis for all rates."

It is believed that the Commission itself fell into the same error in its finding in the *First Report* as to the reasonableness of the proposed increases (R., 75), *which is predicated upon and qualified by* the statement that "All of the parties, both shippers and carriers, were practically unanimous in contending for the establishment of an all-commodity basis to apply throughout the Chicago switching district."

There is no justification in law for the Interstate Commerce Commission to predicate a finding upon that qualification, and nothing short of a unanimous agreement of all shippers could justify such a finding unless it was otherwise in accordance with the powers of the Commission under the Interstate Commerce Act. The original Lowrey basis, as explained, was the direct result of a contractual agreement between carriers and shippers known as the Lowrey agreement, which was signed in 1910, and from the very inception of that agreement grain was carried as an exception to the all-commodity basis. The grain shippers never have agreed that grain should be included in the all-commodity basis. (R., 825; Tr., 1462.)

The Interstate Commerce Commission has no other powers than those delegated to it by the Interstate Commerce Act, and Section 15 (7) of that Act expressly imposes upon the carriers the burden of proof to justify any proposed rate, fare or charge.

The individually published grain switching rates are "rates, fares, or charges" within the meaning of Section 15 (7). It is urged that the Commission in its order with respect to the grain switching rates has totally ignored Section 15 (7), and has arbitrarily, without evidence to support its finding, included all these varying individual

line per-car switching rates in an all-commodity basis, regardless of the fact that for twenty years or more prior to its decision grain had been carried on lower rates than the all-commodity basis. (R., 699-700; Tr., 967-968.) Presumably its order was predicated on the theory expressed by it in its *Second Report* (R., 160), wherein it said:

> "The testimony indicated that a uniform basis of rates, both interstate and intrastate, within the Chicago district is desirable."

We contend that the Commission has no power to include grain in the all-commodity basis simply because it thinks it is desirable that there should be an all-commodity basis. Whether such a basis would be desirable or undesirable, the Commission cannot authorize increases in individually published grain switching rates unless the individual carriers have justified those increases in accordance with the mandate of Section 15 (7) of the Interstate Commerce Act.

Under the Interstate Commerce Act the duty rests upon the Interstate Commerce Commission to establish just and reasonable rates. It was its duty in this case to establish just, reasonable and non-discriminatory grain switching rates within the Chicago switching district, not on any theory that grain should be included in the all-commodity basis, but rather on the merits of the case as to grain. The tests to be applied by the Commission are the ordinary and usual tests which it employs in the consideration of the reasonableness of any given rate, and in the original case none of these tests was applied to the consideration of the reasonableness *per se* of the grain switching rates.

This Court, in the case of *Beaumont S. L. and W. R. Co. v. U. S.*, 282 U. S. 74, on page 86, said:

> "Complete statements by the Commission showing the grounds upon which its determinations rest are

> quite as necessary as are opinions of lower courts setting forth the reasons on which they base their decisions in cases analogous to this. *Wichita R. & Light Co.* v. *Public Utilities Commission,* 260 U. S. 48, 58, 67 L. ed. 124, 130, 43 S. Ct. 51. And we have recently emphasized the duty of such courts fully to state the grounds upon which they act."

Applying the above principle to the report of the Commission in this case, we find that in spite of the Commission's admission (R., 57) that "it will be seen that an increase in the present rates on grain to the proposed all-commodity basis would be a very considerable increase," there is no evidence cited in the report to support a finding that any or all of the individual railroad's grain switching rates of varying amounts should be made uniform and thrown into one common pot with the all-commodity rates.

The single-line switching rates vary in amounts from $4.95 per car to $9.90 per car. (R., 680; Tr., 911.) While it is true, as pointed out by the Commission (R., 57) that the bulk of the grain within the district moves on lower rates than most other commodities, it is likewise true that these rates had been in effect continuously for more than twenty years.

The Commission has many times held, and it is a well-recognized rule, that rates voluntarily established by the carriers, and which have been in effect for a long period of time, are presumed to be reasonable until the contrary has been proved.

In *Coxe Bros. & Co.* v. *Lehigh Valley R. Co.,* 4 I. C. R. 535, 582, the Commission said a railroad company by putting in force a rate of charges furnishes evidence that the rate is profitable, which is more convincing when such rate is long maintained.

In *National Hay Association* v. *Lake Shore and Michigan*

Southern R. Co., 9 I. C. R. 264, it held that where 6th class rates on hay and straw were maintained for 13 years that fact was *prima facie* evidence that such rates were reasonably high.

And in *Anaconda Copper Mining Co.* v. *Director General*, 57 I. C. C. 723, 729, it again said:

> "We have frequently held that a prima facie presumption of reasonableness attaches to a rate that has been long voluntarily maintained."

There were good reasons why grain was excepted from the all-commodity basis under the Lowrey agreement. (R., 700; Tr., 968.) It must be assumed that the traffic executives of the carriers recognized that the transportation characteristics surrounding the movement of grain differed materially from the transportation characteristics of commodities generally, otherwise it would seem to follow that the traffic executives of each and every railroad within the Chicago switching district and their successors in office from 1910 down to the second hearing in Docket 19610 (commenced May, 1928) were either grossly ignorant of transportation conditions surrounding the grain switching movement or unmindful of the interests of their stockholders and of the public.

However, there is affirmative evidence in this record justifying grain switching rates different from the rates on other commodities (R., 685, 829; Tr., 921, 922, 1474), and also that the grain switching rates within the Chicago district are reasonable in comparison with the rates at other grain markets. (R., 821, 824; Tr., 1453, 1460.)

And so the case has come to this, that notwithstanding the presumption of reasonableness attached to rates, which have been voluntarily established and long continued, and notwithstanding that Section 15 (7) of the Interstate Commerce Act expressly places the burden of proof upon the

carriers to prove that the grain switching rates are just and reasonable, nevertheless there was not the slightest attempt on their part to assume the burden of proof or to rebut the prima facie reasonableness of the grain switching rates arising from their voluntary and long continued existence.

If, at the hearing in Docket 19610, the defendant railroads had assumed the burden of proof, which was placed upon them by Section 15 (7) of the Interstate Commerce Act, and which the Interstate Commerce Commission should have compelled them to assume, we apprehend that on cross-examination their witness or witnesses would have met with insurmountable difficulty in justifying increases in the grain switching rates which the Commission admits are "very considerable." (R., 57.)

We respectfully urge that the grain shippers represented by this plaintiff, Board of Trade of the City of Chicago, have not had their day in court, because they were denied the opportunity of cross-examining witnesses, who, under proper procedure would have been produced to testify as to the reasons why grain having so long been carried as an exception to the Lowrey basis, should now be increased up to the all-commodity basis; therefore, the order of the Interstate Commerce Commission of July 31, 1931, is void.

The fact that the investigation instituted by the Commission in Docket 19610 was on its own initiative does not in any manner change the law governing this case. (Compare *U. S.* v. *Abilene & S. R. Co.*, 265 U. S. 274, at page 288-289.) The Interstate Commerce Commission derives its power to enter upon a general investigation of rates by virtue of paragraph 2 of Section 13 of the Interstate Commerce Act, and it has no other or greater power under that section of the Act than if the matter had arisen upon

formal complaint. Par. 2 of Section 13 of the Act does not repeal Par. 7 of Section 15, which definitely places the burden of proof upon the defendant railroads to justify rates increased after January 1, 1910, or "sought to be increased after the passage of this Act."

As was said by this Court in *Interstate Commerce Commission* v. *L. & N. R. Co.*, 227 U. S. 88, at page 93:

> "The Commission is an administrative body and, even where it acts in a quasi judicial capacity, is not limited by the strict rules, as to the admissibility of evidence, which prevail in suits between private parties. *Interstate Commerce Commission* v. *Baird*, 194 U. S. 25, 48 L. ed. 860, 24 Sup. Ct. Rep. 563. But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. In such cases the Commissioners cannot act upon their own information, as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding; for otherwise, even though it appeared that the order was without evidence, the manifest deficiency could always be explained on the theory that the Commission had before it extraneous, unknown, but presumptively sufficient information to support the finding. *United States* v. *Baltimore & O. S. W. R. Co.*, 226 U. S. 14, *ante* 104, 33 Sup. Ct. Rep. 5.
>
> As these contentions of the government must be overruled, it is necessary to examine the record with a view of determining whether there was substantial evidence to support the order."

In the grain case, *A. T. & S. F. R. Co.* v. *U. S.*, 284 U. S. 248, at page 262, Mr. Chief Justice Hughes said:

> "But the Commission, exercising a delegated regu-

latory authority which does not have the freedom of ownership, operates in a field limited by constitutional rights and legislative requirements."

VIII.

The difference between intrastate rates on one hand and interstate rates on the other hand is justified by the difference between intrastate service and interstate service.

Elsewhere we have shown the lack of evidence as to similarity of conditions intrastate and interstate. We now call attention to the evidence affirmatively showing that there is a difference in service interstate and intrastate amply justifying the difference in rates.

Chairman Farrell, dissenting in part from the report of the Commission in the instant case, stated (195 I. C. C. 119; R., 167):

> "I dissent from the majority's conclusion that unjust discrimination against interstate commerce results from the fact that the Indiana and Illinois intrastate switching rates involved are somewhat lower than the interstate switching rates covered by the majority report, because, in my opinion, these disparities in rates, as shown by statements of fact included in the report, are justified by differences in the transportation services, performed by the carriers, to which the rates are applied.
>
> I am authorized to state that Commissioner Aitchison joins in this expression."

In the second report, the Commission, in considering the relative service intrastate and interstate dealt only with the cost study cars. Elsewhere we show that these cost study cars do not reflect the relation of service in any proper degree, intrastate to interstate.

In the following table we show separately the rates found reasonable by the Commission in its *First Report* of

July 31, 1931, for application to the switching of interstate traffic for 1-line, for 2-line and for 3-or-more-line hauls, and the rates which were in effect on Illinois intrastate and on Indiana intrastate switching and which were required by the Commission to be raised to the interstate level. In the final column we show the percentage which the intrastate rate bore to the interstate rate on July 3, 1933:

	RATES			Percentage intrastate of interstate rate
	Interstate	Intrastate		
		Illinois	Indiana	
1-line	3.	2.5	2.5	83.3
2-line	3.5	2.5	2.5	71.
3-line	4.	3.	3.	75.

In the following table we show the average haul interstate and the average haul intrastate for all of the carriers and for all of the traffic moved in September, 1926, together with the percentage which the intrastate average hauls are of the average interstate haul for the three lengths of haul:

	Average haul Interstate	Illinois		Indiana	
		Average haul	Percentage of interstate haul	Average haul	Percentage of interstate haul
1-line	15.3	7.4	48	6.1	40
2-line	28.7	15.8	55	7.2	25
3-line	33.6	22.7	68	...	..

It will be noted from the foregoing table that in all instances the percentage relationship of the average haul intrastate, both in Indiana and in Illinois, to the average haul interstate, is considerably less than the percentage relationship of the intrastate rate to the applicable interstate rate as set forth in the first table under this heading.

Each excess mile of haul of the interstate traffic over the intrastate traffic represents a large investment in track,

right of way, ties, etc. In a table set forth on page 132 hereof we show the investment in mile of track for the switching roads; there the investment per mile of track for the B. & O. Chicago Terminal is shown as $101,000. The average 1-line interstate haul of 15.3 miles would require $1,545,300 investment and the average 1-line Illinois intrastate haul of 7.4 miles would require $747,400 investment. There is also an additional cost for maintenance, upkeep and repair for each mile used in performing the interstate service in excess of the intrastate service, as well as an additional fuel, wage and equipment cost for operation for the additional haul.

It has long been recognized that a comparison of rates must reflect the comparison in service; to put it as the Commission said as long ago as 1891, in *Coxe Brothers & Co.* v. *Lehigh Valley R. R. Co.*, 4 I. C. R. 535, at 560:

> "Ordinarily there is no better criterion for reasonable charges than that which is in proportion to the service rendered;"

So that in determining the reasonableness of intrastate rates for switching service in Illinois and in Indiana in relation to the interstate rates for switching service within the district, we find that the difference in rates, intrastate and interstate is much less than the difference in service performed intrastate and the service performed interstate, or to put it in another form, relative service concerned, the carriers charge more for performing intrastate switching in Illinois and in Indiana than they charge for the interstate switching between points in the switching district.

IX.

The Court erred in failing to find the facts specially and to state separately its conclusions of law thereon, as required by Equity Rule 70½.

Equity Rule 70½ provides:

> "In deciding suits in equity, including those required to be heard before three judges, the court of first instance shall find the facts specially and state separately its conclusions of law thereon; and its findings and conclusions shall be entered of record and, if an appeal is taken from the decree, shall be included by the clerk in the record which is certified to the appellate court under rules 75 and 76."

On November 3, 1933, the District Court filed its findings of fact and propositions of law. The findings of fact (R., 1307 to 1315) are mere statements of the various steps taken in the case and a description of the parties thereto. In Paragraph VIII (R., 1315) it is stated:

> "A part of the evidence presented to the Interstate Commerce Commission in justification of the measure of what the rates within the Chicago switching district should [be] in the hearing in Docket 19610, prior to the Commission's order of July 31, 1931, consisted of a cost study. Other evidence in addition to the cost study, was offered and received with respect to said switching rates both state and interstate within the Chicago switching district. The protestants in Docket 19610, and related cases, including the plaintiffs herein, offered evidence in opposition to the said cost study."

The Court nowhere makes any findings of fact as to the evidence before the Commission which the bill of complaint alleges constituted no basis for the finding of the Commission. The propositions of law which the court holds, are eight separate sentences, which constitute no more than a denial of the allegations of the bill of complaint. The first

of the propositions is that the Commission's denial of plaintiffs' motions of January 28th and February 3rd for a different cost study, did not constitute an abuse of discretion or denial of a full hearing. The second proposition is that the order of the Commission "is supported by sufficient evidence" but nowhere is there any statement of what the evidence is that could possibly support the Commission's order. Paragraph 3 states that the order of the Commission contains adequate findings of fact, but these findings are not referred to, and there is no statement of what findings should be made in order to constitute an adequate finding. Similarly, the remaining propositions are mere conclusions of the Court and there is no discussion of any provision of the statutes, nor any reference to any decision of any court.

So we submit that the findings of fact and propositions of law filed November 3, 1933, do not comply with Equity Rule 70½. It may be that appellants have no right to complain of the failure of the District Court to comply with Rule 70½, but we believe that it would have been of assistance to counsel for appellants in determining the course they desired to take and in presenting their case in this Court if they could have known what facts and what law controlled the Court in its final decree dismissing the bill of complaint.

This Court discussed Equity Rule 70½ in *Public Service Commission of Wisconsin* v. *Wisconsin Telephone Co.*, 289 U. S. 67, 77 L. ed. 1036, pointing out the importance of a statement by the District Court of the grounds of decision, both as to facts and law "as an aid to litigants and to this Court." There the District Court rendered no opinion and apart from a general statement declaring that prescribed rates were confiscatory, made no finding of fact, and no statement of the grounds of the decision, either as to facts

or law contemplated by the Rule and required by good practice. This Court vacated the decree, and the cause was remanded for findings and conclusions appropriate to a decision upon an application for an interlocutory injunction, the temporary restraining order remaining in force pending that determination.

Like action was taken in *Public Service Commission of Indiana* v. *Northern Indiana Public Service Co.*, 289 U. S. 703, 77 L. ed. 1460, an appeal from the District Court of the United States for the Northern District of Indiana.

Appellants bring this matter to the attention of the Court by assignment of error, but they specifically pray that action by this Court shall not extend to a remanding of the case to the District Court for special findings of fact and conclusions of law thereon appropriate to the decision as required by Equity Rule 70½, as such action could only result in delay in determining the validity of the Commission's order of July 3, 1933.

APPENDIX A.

Pertinent provisions of the Interstate Commerce Act.

SECTION 2.

Sec. 2 (As amended February 28, 1920), (U. S. Code, title 49, sec. 2). That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

SECTION 3.

Sec. 3 (As amended February 28, 1920, and March 4, 1927). (U. S. Code, title 49, sec. 3). (1) That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

SECTION 13, PARAGRAPHS 2, 3 AND 4.

Sec. 13 (As amended June 18, 1910 and February 28, 1920): (U. S. Code, title 49, sec. 13). (2) Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

(3) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and

to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act.

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

SECTION 15 (7).

Sec. 15 (As amended June 29, 1906, June 18, 1910, February 28, 1920, and March 4, 1927). (U. S. Code, title 49, sec. 15.) (7) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once,

and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a rate, fare, or charge increased after January 1, 1910, or of a rate, fare, or charge sought to be increased after the passage of this Act, the burden of proof to show that the increased rate, fare, or charge, or proposed increased rate, fare, or charge, is just and reasonable shall be upon the carrier, and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

SECTION 15a. REPEALED JUNE 16, 1933.

Sec. 15a (Added February 28, 1920) (U. S. C. A., title 49, sec. 15a). (1) When used in this section the term "rates" means rates, fares, and charges, and all classifications, regulations, and practices, relating thereto; the term "carrier" means a carrier by railroad or partly by railroad and partly by water, within the continental United States, subject to this Act, excluding (a) sleeping-car companies and express companies, (b) street or suburban electric railways unless operated as a part of a general steam railroad system of transportation, (c) interurban electric railways unless operated as a part of a general steam railroad system of transportation or engaged in the general transportation of freight, and (d) any belt-line railroad, terminal switching railroad, or other terminal facility, owned exclusively and maintained, operated, and controlled by any State or political subdivision thereof; and the term "net railway operating income" means railway operating income, including in the computation thereof debits and credits arising from equipment rents and joint facility rents.

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided*, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

(3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate

groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: *Provided*, That during the two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5½ per centum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one percentum of such aggregate value to make provision in whole or in part for improvements, betterments or equipment, which, according to the accounting system prescribed by the Commission, are chargeable to capital account.

(4) For the purposes of this section, such aggregate value of the property of the carriers shall be determined by the Commission from time to time and as often as may be necessary. The Commission may utilize the results of its investigation under section 19a of this Act, in so far as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever pursuant to section 19a of this Act the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value.

(5) Inasmuch as it is impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unrea-

sonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, it is hereby declared that any carrier which receives such an income so in excess of a fair return, shall hold such part of the excess, as hereinafter prescribed, as trustee for, and shall pay it to, the United States.

(6) If, under the provisions of this section, any carrier receives for any year a net railway operating income in excess of 6 per centum of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid to the Commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described: For the purposes of this paragraph the value of the railway property and the net railway operating income of a group of carriers, which the Commission finds are under common control and management and are operated as a single system, shall be computed for the system as a whole irrespective of the separate ownership and accounting returns of the various parts of such system. In the case of any carrier which has accepted the provisions of section 209 of this amendatory Act the provisions of this paragraph shall not be applicable to the income for any period prior to September 1, 1920. The value of such railway property shall be determined by the Commission in the manner provided in paragraph (4).

(7) For the purpose of paying dividends or interest on its stocks, bonds or other securities, or rent for leased roads, a carrier may draw from the reserve fund established and maintained by it under the provisions of this section to the extent that its net railway operating income for any year is less than a sum equal to 6 per centum of the value of the railway property held for and used by it in the service of transportation, determined as provided in paragraph (6); but such fund shall not be drawn upon for any other purpose.

(8) Such reserve fund need not be accumulated and maintained by any carrier beyond a sum equal to 5 per centum of the value of its railway property determined as herein provided, and when such fund is so accumulated and maintained the portion of its excess income which the carrier is permitted to retain under paragraph (6) may be used by it for any lawful purpose.

(9) The Commission shall prescribe rules and regulations for the determination and recovery of the excess income payable to it under this section, and may require such security and prescribe such reasonable terms and conditions in connection therewith as it may find necessary. The Commission shall make proper adjustments to provide for the computation of excess income for a portion of a year, and for a year in which a change in the percentage constituting a fair return or in the value of a carrier's railway property becomes effective.

(10) The general railroad contingent fund so to be recoverable by and paid to the Commission and all accretions thereof shall be a revolving fund and shall be administered by the Commission. It shall be used by the Commission in furtherance of the public interest in railway transportation either by making loans to carriers to meet expenditures for capital account or to refund maturing securities originally issued for capital account, or by purchasing transportation equipment and facilities and leasing the same to carriers, as hereinafter provided. Any moneys in the fund not so employed shall be invested in obligations of the United States or deposited in authorized depositaries of the United States subject to the rules promulgated from time to time by the Secretary of the Treasury relating to Government deposits.

(11) A carrier may at any time make application to the Commission for a loan from the general railroad contingent fund, setting forth the amount of the loan and the term for which it is desired, the purpose of the loan and the uses to which it will be applied, the present and prospective ability of the applicant to repay the loan and meet the requirements of its obligations in that regard, the character and value of the security offered, and the extent to which the public

convenience and necessity will be served. The application shall be accompanied by statements showing such facts and details as the Commission may require with respect to the physical situation, ownership, capitalization, indebtedness, contract obligations, operation, and earning power of the applicant, together with such other facts relating to the propriety and expediency of granting the loan applied for and the ability of the applicant to make good the obligation, as the Commission may deem pertinent to the inquiry.

(12) If the Commission, after such hearing and investigation, with or without notice, as it may direct, finds that the making, in whole or in part, of the proposed loan from the general railroad contingent fund is necessary to enable the applicant properly to meet the transportation needs of the public, and that the prospective earning power of the applicant and the character and value of the security offered are such as to furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor, and to meet its other obligations in connection with such loan, the Commission may make a loan to the applicant from such railroad contingent fund, in such amount, for such length of time, and under such terms and conditions as it may deem proper. The Commission shall also prescribe the security to be furnished, which shall be adequate to secure the loan. All such loans shall bear interest at the rate of 6 per centum per annum, payable semiannually to the Commission. Such loans when repaid, and all interest paid thereon, shall be placed in the general railroad contingent fund.

(13) A carrier may at any time make application to the Commission for the lease to it of transportation equipment or facilities, purchased from the general railroad contingent fund, setting forth the kind and amount of such equipment or facilities and the term for which it is desired to be leased, the uses to which it is proposed to put such equipment or facilities, the present and prospective ability of the applicant to pay the rental charges thereon and to meet the requirements of its obligations under the lease, and the extent to which the public convenience and necessity will be served. The application shall be accompanied by statements showing such facts and details as the Commis-

sion may require with respect to the physical situation, ownership, capitalization, indebtedness, contract obligations, operation, and earning power of the applicant, together with such other facts relating to the propriety and expediency of leasing such equipment or facilities to the applicant as the Commission may deem pertinent to the inquiry.

(14) If the Commission, after such hearing and investigation, with or without notice, as it may direct, finds that the leasing to the applicant of such equipment or facilities, in whole or in part, is necessary to enable the applicant properly to meet the transportation needs of the public, and that the prospective earning power of the applicant is such as to furnish reasonable assurance of the applicant's ability to pay promptly the rental charges and meet its other obligations under such lease, the Commission may lease such equipment or facilities purchased by it from the general railroad contingent fund, to the applicant for such length of time, and under such terms and conditions as it may deem proper. The rental charges provided in every such lease shall be at least sufficient to pay a return of 6 per centum per annum, plus allowance for depreciation determined as provided in paragraph (5) of section 20 of this Act, upon the value of the equipment or facilities leased thereunder. All rental charges and other payments received by the Commission in connection with such equipment and facilities, including amounts received under any sale thereof, shall be placed in the general railroad contingent fund.

(15) The Commission may from time to time purchase, contract for the construction, repair and replacement of, and sell, equipment and facilities, and enter into and carry out contracts and other obligations in connection therewith, to the extent that moneys included in the general railroad contingent fund are available therefor, and in so far as necessary to enable it to secure and supply equipment and facilities to carriers whose applications therefor are approved under the provisions of this section and to maintain and dispose of such equipment and facilities.

(16) The Commission may from time to time prescribe such rules and regulations as it deems necessary to carry out the provisions of this section respecting

the making of loans and the lease of equipment and facilities.

(17) The provisions of this section shall not be construed as depriving shippers of their right to reparation in case of overcharges, unlawfully excessive or discriminatory rates, or rates excessive in their relation to other rates, but no shipper shall be entitled to recover upon the sole ground that any particular rate may reflect a proportion of excess income to be paid by the carrier to the Commission in the public interest under the provisions of this section.

(18) Any carrier, or any corporation organized to construct and operate a railroad, proposing to undertake the construction and operation of a new line of railroad may apply to the Commission for permission to retain for a period not to exceed ten years all or any part of its earnings derived from such new construction in excess of the amount heretofore in this section provided, for such disposition as it may lawfully make of the same, and the Commission may, in its discretion, grant such permission, conditioned, however, upon the completion of the work of construction within a period to be designated by the Commission in its order granting such permission.

PRESENT SECTION 15a.

Sec. 15a (As amended June 16, 1933, c. 91, title II, sec. 205, 48 Stat. 220):

(1) When used in this section, the term "rates" means rates, fares, and charges, and all classifications, regulations, and practices relating thereto.

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service.

APPENDIX B.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1933.

ILLINOIS COMMERCE COMMISSION, ET AL., *Appellants,*
vs.
THE UNITED STATES OF AMERICA, ET AL., *Appellees.*
No. 787.

STIPULATION.

It appearing from an inspection of the printed transcript of record herein that there is not shown a copy of the motions filed on behalf of appellants herein with the Interstate Commerce Commission seeking an order requiring respondent railroad companies to conduct a cost study on all lines within the Chicago switching district for a representative period, and such motions having been presented to the District Court and considered at the hearing, and it being the desire of all parties that this Court shall have before it a copy of such motions, it is hereby stipulated that counsel for appellants shall print as an appendix to their brief a copy of this stipulation and a copy of the printed motion filed by the Illinois Commerce Commission on February 6, 1932, properly certified by the Secretary of the Interstate Commerce Commission.

It is further stipulated by and between counsel for the appellants and counsel for the appellees that an identical

motion, differing only in names of those making the motion and their counsel, was filed on January 30, 1932, by the Acme Steel Company, and others, and on March 8, 1932, by the Public Service Commission of Indiana.

It is further stipulated that the certified copy of motion filed February 6, 1932, shall be available for the consideration of this Court to the same extent as if it were printed as part of the record herein.

It is further stipulated that said motions, and each of them, were denied by the Interstate Commerce Commission in orders dated February 8, 1932, and March 14, 1932.

This stipulation shall be filed with the Clerk of this Court.

OTTO KERNER,
IRVIN ROOKS,
HARRY R. BOOTH,
PHILIP LUTZ, JR.,
HERBERT J. PATRICK,
HERBERT J. CAMPBELL,
LUTHER M. WALTER,
Counsel for Appellants.

ELMER B. COLLINS,
Counsel for the United States.

DANIEL W. KNOWLTON,
Counsel for the Interstate Commerce Commission.

J. N. DAVIS,
Counsel for the Railroad Appellees.

March 29, 1934.

INTERSTATE COMMERCE COMMISSION

WASHINGTON

I, GEORGE B. MCGINTY, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached is true copy of Motion to Require Respondents to Conduct Cost Study on All Lines Within Chicago Switching District for Representative Period, filed by Illinois Commerce Commission on behalf of the State of Illinois, February 6, 1932, in Docket No. 19610, Switching Rates in the Chicago Switching District, the original of which is now on file and of record in the office of this Commission.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of said Commission this 7th day of March, A. D. 1934.

(Signed) GEORGE B. MCGINTY,

(Seal) *Secretary of the Interstate Commerce Commission.*

BEFORE THE

INTERSTATE COMMERCE COMMISSION

SWITCHING RATES IN THE CHICAGO SWITCHING DISTRICT. } No. 19610.

MOTION TO REQUIRE RESPONDENTS TO CONDUCT COST STUDY ON ALL LINES WITHIN CHICAGO SWITCHING DISTRICT FOR REPRESENTATIVE PERIOD.

Filed by Illinois Commerce Commission on behalf of the State of Illinois.

G. GALE GILBERT, Chairman,
J. PAUL KUHN,
WALTER H. WILSON,
WILLIAM M. BRINKMAN,
PHIL W. COLLINS,
PAUL SAMUELL,
Commissioners.

February 3, 1932.

BEFORE THE

INTERSTATE COMMERCE COMMISSION

SWITCHING RATES IN THE CHICAGO SWITCHING DISTRICT. } No. 19610.

MOTION TO REQUIRE RESPONDENTS TO CONDUCT COST STUDY ON ALL LINES WITHIN THE CHICAGO SWITCHING DISTRICT FOR REPRESENTATIVE PERIOD.

Now comes the Illinois Commerce Commission and moves the Commission to require the respondents herein to conduct a cost study as more specifically hereinafter set forth, and in support thereof show as follows:

I.

These proceedings were reopened by order of the Commission dated November 2, 1931,

> "for further hearing with respect to the relation of the rates and charges for switching in intrastate commerce to the rates prescribed for like switching

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in interstate commerce for the purpose of determining whether the adjustment of the interstate and intrastate rates and charges is unduly prejudicial to interstate shippers and traffic, and unjustly preferential of intrastate shippers and traffic, or unjustly discriminatory against interstate commerce, in violation of Section 13 of the Interstate Commerce Act, with a view to the entry of such order as may be necessary to correct such violation or violations as may be found to exist."

II.

Rates prescribed by your Commission for interstate hauls in the Chicago Switching District became effective on December 10, 1931. The decision of your Commission on July 31, 1931, 177 I. C. C. 669, was predicated almost entirely upon the result of a cost study made by certain of the respondents in 1927, as applied against a traffic test in September, 1926.

III.

The carriers' cost study now of record in this proceeding is defective in the following respects:

(a) The fifteen railroads participating in the cost study are not representative of the transportation situation throughout the Chicago Switching District.

(b) The period selected for the cost study by the respondents is not representative.

(c) The assignment of elements of service to each route was not based on any test of actual movement.

(d) The Saur-Coverston formula as applied for the determination of switching costs is defective, particularly as used in the determination of engine-hour and car-detention costs.

(e) The application of costs determined during varying periods of a single week of 1927 to the movement of cars shown in the traffic test for the month of September, 1926, is not a proper method for determining representative costs for switching in the Chicago District.

(f) The testimony as to cost relates wholly to a period not later than October 25, 1927, and the hearing was concluded on September 21, 1928.

Taking up these objections in the order above stated, we present the following salient facts:

(a) The fifteen railroads participating in the cost study are not representative of the transportation situation throughout the Chicago Switching District.

At no time has the cost study embraced more than fifteen railroads, although there are thirty-five railroads operating in the Chicago Switching District.

Your Commission has never directed that any particular lines be included in the study, but it denied the re-

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quest of counsel for the shippers that certain lines be included in the cost study.

On May 25, 1927, the Commission requested the respondents to submit a statement showing the cost of switching carload traffic within the Chicago Switching District, specifically directing that the car movement should be representative of traffic originating and terminating within such district, and in order that the expense of the cost study should not be prohibitive, suggested the selection of yards of

> "a limited number of carriers in which, or through which, are performed car movements which are representative of those to which the rates apply."

In response to this request the carriers selected the Indiana Harbor Belt, Baltimore & Ohio Chicago Terminal, Belt Railway, Elgin, Joliet & Eastern, Chicago & North Western, Pennsylvania, Chicago, Burlington & Quincy, and Chicago, Milwaukee & St. Paul, as the carriers to be studied; the week of August 4th to 10th was selected as the period in which the cost study would be taken for those particular lines. Further conference was had and on October 29, 1927, your Commission gave notice that the eight roads were not sufficiently representative of the entire movement; a further study was made during the period October 9th to 25th, 1927, by the Illinois Central, Chicago, Rock Island & Pacific, Chicago

Short Line, Chicago & Illinois Western, Chicago West Pullman and Southern, Illinois Northern, and the Pullman railroads, as well as a further study by the Pennsylvania Railroad.

All these last named seven lines had been embraced in a list of carriers which the shippers had insisted were necessary to add to the original eight lines in order that the cost study should be representative. In addition to those seven which were added, the shippers had requested that the Chicago River & Indiana (including the Chicago Junction) should be included in the cost study. This request was presented to the carriers by the Commission, but the carriers declined and failed to include any of the movements on the Chicago Junction. At the hearing, the carriers were advised by your Commission that the responsibility for a representative cost study rested upon the carriers and stated that they assumed the risk of not having a representative study.

The Chicago River & Indiana Railroad, operating its own line and the line leased from the Chicago Junction, is one of the most important switching roads in the Chicago Switching District. Its volume of traffic is great and the length of haul short. The average haul by the Chicago Junction of single-line cars, is 1.6 miles, and in September, 1926, it handled 1764 cars in single-line

movement, which was the largest number of cars handled by any single carrier in switching service in the Chicago District during that month, with the exception of the Indiana Harbor Belt. Of the total traffic moving in the Chicago Switching District in September, 1926, costs were applied to only 60.68% of the single-line cars, to 64.84% of the two-line cars, and 51.95% of the three-line cars. The average single-line haul of carriers included in the study was approximately ten miles intrastate, and 15 miles interstate.

It is most unfair for the carriers to present a cost study for lines carrying long hauls and to exclude a switching carrier which has so large a volume of cars moving for an average haul of only 1.6 miles. We particularly call attention to the exclusion of the Chicago Junction with its short hauls and the inclusion of the Elgin, Joliet & Eastern with its long hauls.

(b) The period selected for the cost study by the respondents is not representative.

The test periods used for the study were as follows:

Date	Carrier
June 15 to 21, 1927..	Chicago, Burlington & Quincy
	Chicago & North Western
Aug. 4 to 10, 1927...	Baltimore & Ohio Chicago Terminal
	Belt Railway of Chicago
	Chicago, Milwaukee & St. Paul
	Elgin, Joliet & Eastern
	Indiana Harbor Belt
Aug. 8 to 14, 1927...	Pennsylvania Railroad
Oct. 19 to 25, 1927...	Chicago, Rock Island & Pacific
	Chicago Short Line
	Chicago, West Pullman and Southern
	Chicago & Illinois Western
	Illinois Central
	Illinois Northern
	Pullman Railroad

There is no evidence of record as to the relation between the number of conductors or switching crews during the test period of one week on each of the fifteen roads to the total number of conductors and switching crews working per day during the average week of 1927. Neither does the record reveal the relative volume of work performed during this week as compared with the total work performed by each carrier during the year.

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A test period of only seven days, and that not the same for each of the study roads, is entirely too short upon which to base a determination so important as the unit cost of service in the Chicago Switching District. This defect in a cost study was recognized by the decision of your Commission in *Boston Wool Trade Association* v. *Director General*, 69 I. C. C. 282, where the study period was eight weeks at Boston on the terminals of the New Haven and of the Boston and Maine Railroads. Bearing in mind that the test period there was eight times as long as that in the instant case, we quote from the decision cited: (page 298-9)

> "but it is obviously dangerous to predicate conclusions upon a short test period which may or may not reflect average conditions. Conditions in switching yards change continually and economy of operation necessitates increase or reduction of the switching force from time to time, with re-alignment of the work in each case. The inter-relation of line-haul and switching traffic at Boston is such that it is exceedingly difficult, if it is possible at all, to segregate properly the expense of handling purely switching movements from the expense of switching through line-haul cars. *Switching costs can probably be ascertained with approximate accuracy only through a system of accounts designed for the purpose and maintained over a considerable period of time.*" (Italics our own.)

Manifestly a cost study for a single week, staggered over a five months' period by these fifteen carriers, in 1927, can afford no basis for a finding as to the relative cost of handling intrastate and interstate traffic in 1932.

(c) The assignment of elements of service to each route was not based on any test of actual movement.

The record shows that elements of service on the fifteen roads were assigned to each route based upon the knowledge and experience of operating representatives of each road as to how the cars moved. Actual movements of cars were not traced except for about 200 cars.

The record is replete with showings of errors made by the operating representatives of the carriers in assigning elements of service and resulting elements of cost. This subject is one of the most important phases of the cost study work. There should have been a tracing of the movements of cars showing the actual transfer elements on each car. Only in this way can elements of cost be accurately determined for any particular car. To permit the respondents to compute costs for each movement of cars, and then to permit an operating man to sit down in his office and guess that the cars must have moved under assigned elements of service, is to put a premium upon error, and where, as in this case

the entire reliance of the carriers was upon the result of the cost study, it presents a wholly unreliable record as to costs; and your honorable Commission cannot afford to assert its power under the Thirteenth Section of the Interstate Commerce Act to over-ride and nullify the decision of the lawfully constituted regulatory body of the State of Illinois by setting aside its judgment upon the same subject matter when the record presented is so defective as a basis for determining costs. It should be borne in mind that during the month of September, 1926, the record indicates that 53.3% of the total traffic involved was Illinois intrastate traffic; while the interstate movement represented but 40.3%.

(d) The Saur-Coverston formula, as applied for the determination of switching costs is defective, particularly as used in the determination of engine-hour and car-detention costs.

The Saur-Coverston formula has been presented to your Commission in a number of cases. Its fundamental principle is the time feature. Allocated charges for each general group, except for clerical and car-detention costs, are associated with the engine-hour. The engine-hour as used in this case represents a composite of many circumstances, not all of which are present at a given

time, nor in like proportions in connection with specified elements of services involved in handling traffic and in performing services incidental thereto. The average cost per engine-hour as shown by Exhibit No. 2, varied from $8.76 in the case of the Chicago, Burlington & Quincy "other than general switching," to $33.33, for the Indiana Harbor Belt in operating the Gibson-Hump. The average engine-hour cost for the cost study roads is shown as $14.58.

The output per engine-hour—that is, the number of cars handled in classification service, transfer service, interchange service, weighing service, team-track service, and cars handled at the freight houses, varied widely. From a study of these figures the conclusion must be reached that the present record is defective in determining engine-hour costs.

The item of car-detention is one of the most important elements in this case as it constitutes a large percentage of the alleged cost of switching cars within the Chicago District. There is no showing that individual classes of freight train cars are the same for each of the carriers who participated in the cost study, and no showing that the cars used in handling of shipments from point to point within the district are of like kind and were used in exact proportion to the kind of cars

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used by the nine roads embraced in the study. There is no showing that the cost of repairs to individual classes of freight train cars were the same for varying forms of construction and there is no showing that the proportion of cars in use were such as to give due weight to charges for repairs, depreciation, et cetera, as between individual carriers. The cost of repairs is not necessarily the result of the length of time the car spends in the terminal but of the damage done while being switched, and ordinarily the principal damage to a car in the terminal is in classification service. No cost study on this subject can be satisfactory, unless it recognizes the various classes of car repairs and it must consider time in service, mileage run, and damage to cars in switching based upon the experience of the switching roads.

Engine-hour costs are an accumulation of costs, including among other things, track maintenance, and when, as under the Saur-Covertson formula, as has been done in this case, time is computed on industry tracks where the carrier has no investment and no track maintenance, there is charged against the switching service an element of cost which is not borne by the carrier. By segregating the time of the engine while on the industry-owned tracks, the carrier can eliminate the excessive cost contained in the engine-hour costs, and the

overhead applied thereto in the use of the operating ratio.

Many other errors in the Saur-Covertson formula as applied in this case were adverted to in the record. In whatever further cost study is had in this case data should be accumulated from which the Commission can determine what is the proper engine-hour and car-detention costs, as well as other items embraced within the formula.

(e) The application of costs determined during varying periods of a single week in 1927 to the movement of cars disclosed in the traffic test for the month of September, 1926, is not a proper method for determining representative costs for switching in the Chicago District.

The lack of representative character in the cost study due to the inclusion of only fifteen of the thirty-five railroads within the District, and to a varying single week on the individual fifteen lines clearly shows the unfairness of the cost study; but that unfairness is emphasized when the cost study of a single week in one year is applied to a traffic test for a month in another year. Not a single week in September was embraced in the cost study; the varying costs ascertained for single weeks

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in other months of another year were applied against the traffic during the entire month of September, 1926. Whether the traffic test in September, 1926, is representative of the average movement throughout a period of years is not disclosed by the record. In any event, the cost study should be applied against a current traffic test.

(f) The testimony as to cost relates wholly to a period not later than October 25, 1927, and the hearing was concluded on September 21, 1928.

Attention is again directed to the fact that all of the testimony introduced in this proceeding as to cost, relates wholly to a period not later than October 25, 1927, and the hearing was concluded on September 21, 1928.

It would thus appear that your Commission is asked by the respondent carriers to require increases in intrastate switching rates within the State of Illinois based largely upon evidence of cost relating to a period over four years ago.

Your honorable Commission, in many cases, and the Supreme Court in its decisions, has recognized need for careful and thorough consideration of all the facts in cases involving the exercise by your Commission of the

authority granted by Section 13 of the Interstate Commerce Act.

The present case was reopened by your Commission solely upon the question of whether the relation of the rates and charges for switching in intrastate commerce to the rates prescribed for like switching in interstate commerce, is in violation of Section 13 of the Interstate Commerce Act. The Illinois Commerce Commission in Docket 17250—*In the Matter of the Proposed Changes in Rates for the Transportation of Carload Freight Between Points in the Chicago Switching District and also Between Points in the Chicago Switching District and Points Outside of the Said District Resulting in Advances and Reductions Stated in Schedules Filed by the Atchison, Topeka and Santa Fe Railway Company et al.,* —has specifically found upon the same evidence now of record in this proceeding, the hearing being held jointly with your Commission, that the cost study did not warrant any increase in the rates in effect on Illinois intrastate traffic in the Chicago Switching District.

The decision of the Illinois Commission, within which state the record shows that 53.3% of the total traffic moved, pointed out, among other things, that the cost study was not representative in character as to carriers and as to the time embraced in the study. Only by a new

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and thorough cost study can the record be made complete and sufficient for the exercise of the important power which your Commission possesses. All of the circumstances connected with this case require a new and thorough cost study in order that your Commission can have before it all of the facts before asserting its power to over-ride and nullify the decision of the Illinois Commerce Commission which is the lawfully constituted regulatory body of the State of Illinois.

Wherefore we respectfully move the Commission to require the respondents herein to conduct a cost study under the supervision of the Commission with full rights to representatives of all parties to participate therein,

(a) for a representative period of one month, or whatever period the Commission may regard as proper;

(b) by each and every carrier within the Chicago Switching District;

(c) the cost to be separately ascertained for Indiana intrastate movements, Illinois intrastate movements and interstate switching district movements for each of the following four switching movements:

1. switching as an extension of a line-haul movement on which the switching cost is absorbed.

2. switching of line-haul traffic by an intermediate carrier whose switching charge is absorbed out of the line-haul rate,

3. switching wholly confined to the switching district,

4. switching movement by the road-haul carrier in connection with road-haul movement;

(d) A statement of revenues of study carriers shown separately for each class shown in previous paragraphs as to costs, except the revenue of the road-haul carrier for its own switching in connection with road-haul traffic, covered by Paragraph (c), No. 4.

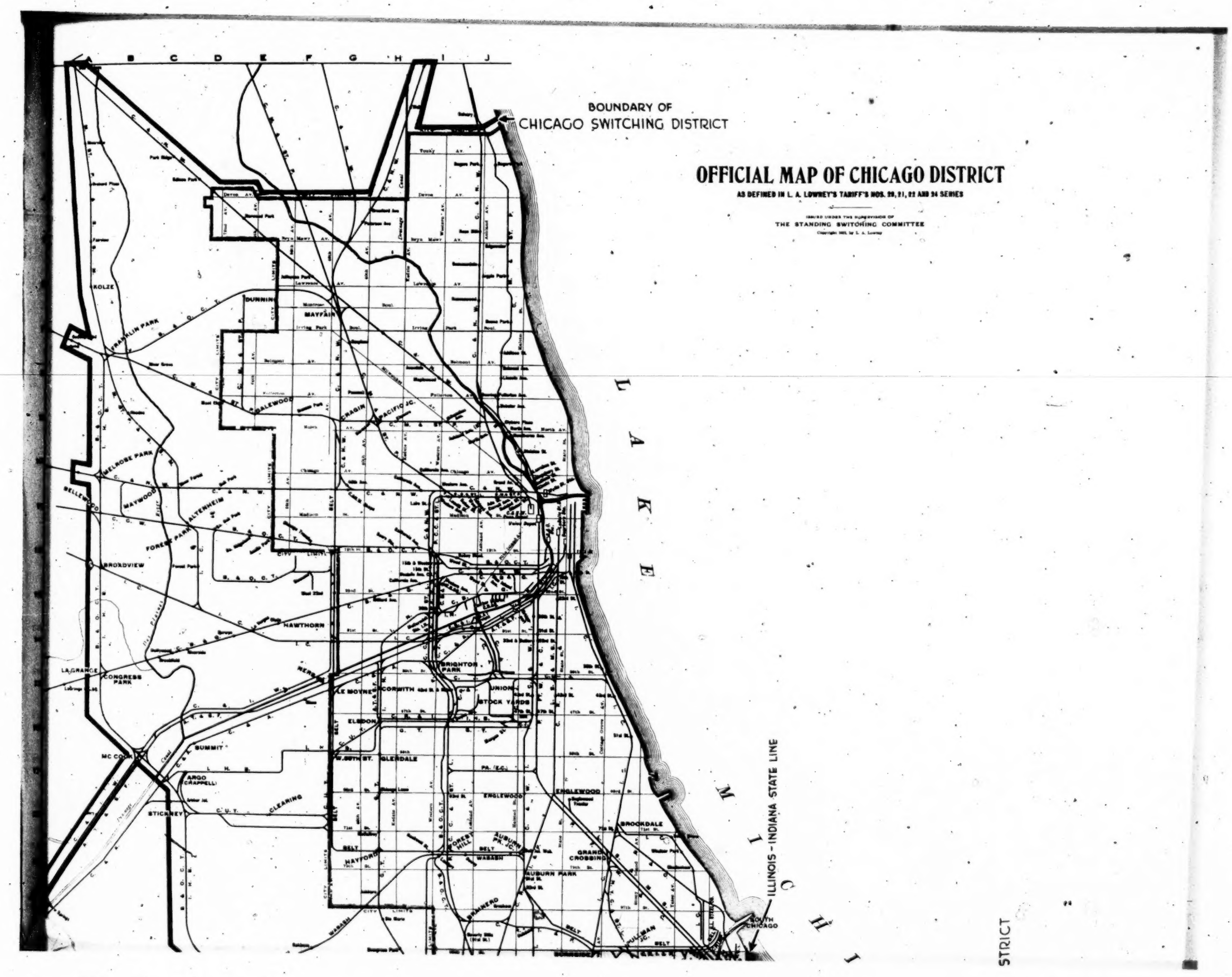
(e) Both the costs under paragraph (c) and the revenues under paragraph (d) to be classified according to commodity descriptions followed in the previous cost study revenues to be set forth both on the basis of the rates in effect December 9 and those in effect on December 10, 1931.

(f) Statistical data such as prepared in the previous cost study as to average haul, one-line, two-line, three-line, average loading, average revenue, et cetera, to be computed.

Dated at Springfield, Illinois, February 3rd, 1932.

G. GALE GILBERT, Chairman,
J. PAUL KUHN,
WALTER H. WILSON,
WILLIAM M. BRINKMAN,
PHIL W. COLLINS,
PAUL SAMUELL,
Commissioners.

Centennial Annex Building
Springfield, Illinois


BOUNDARY OF
CHICAGO SWITCHING DISTRICT
OFFICIAL MAP OF CHICAGO DISTRICT
AS DEFINED IN L. A. LOWNEY'S TARIFF'S NOS. 20, 21, 22 AND 24 SERIES
ISSUED UNDER THE SUPERVISION OF
THE STANDING SWITCHING COMMITTEE
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LAKE MICHIGAN
ILLINOIS-INDIANA STATE LINE
KOLZE
DUNNING
MAYFAIR
FRANKLIN PARK
GALEWOOD
CRAGIN
PACIFIC JC.
MELROSE PARK
BELLEWOOD
MAYWOOD
ALTENHEIM
FOREST PARK
BROADVIEW
HAWTHORN
LA GRANGE
CONGRESS PARK
NERSON
LE MOYNE
CORWITH
BRIGHTON PARK
UNION STOCK YARDS
ELSDON
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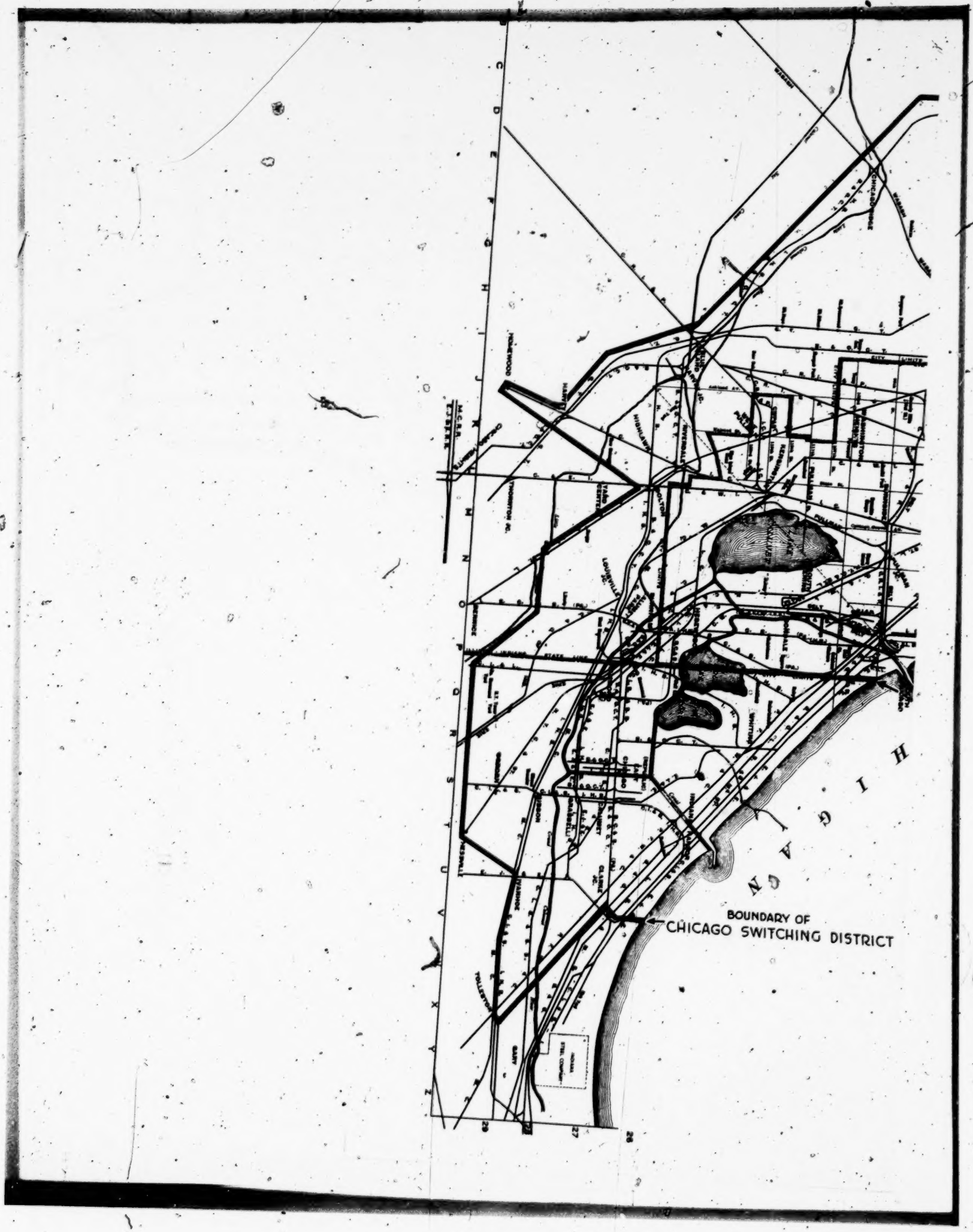
GLENDALE
MC COOK
SUMMIT
ARGO (CRAPPELL)
STICKNEY
CLEARING
HAYFORD
FOREST HILL
AUBURN PK. JC.
AUBURN PARK
BRAINERD
ENGLEWOOD
BROOKDALE
GRAND CROSSING
PULLMAN JC.
SOUTH CHICAGO
STRICT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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1933.

No. 787.

ILLINOIS COMMERCE COMMISSION, ET AL., *Appellants.*

vs.

THE UNITED STATES OF AMERICA, ET AL., *Appellee.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

REPLY BRIEF OF APPELLANTS.

OTTO KERNER,
Attorney General of Illinois;
IRVIN ROOKS,
HARRY R. BOOTH,
Assistant Attorneys General of Illinois,
Counsel for Illinois Commerce Commission.
PHILIP LUTZ, JR.,
Attorney General of Indiana;
HERBERT J. PATRICK,
Deputy Attorney General of Indiana,
Counsel for Public Service Commission (of Indiana).
HERBERT J. CAMPBELL,
Counsel for Board of Trade of the City of Chicago.
JOHN S. BURCHMORE,
NUEL D. BELNAP,
LUTHER M. WALTER,
Counsel for Acme Steel Company.

April 30, 1934.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D., 1933

No. 787

ILLINOIS COMMERCE COMMISSION, ET AL, *Appellants*,

v.

UNITED STATES OF AMERICA, ET AL, *Appellees*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

REPLY BRIEF FOR APPELLANTS

STATEMENT

Two briefs on behalf of the appellees have been filed in this cause, the first being on behalf of the Alton Railroad Company and the other railroad carriers and the second on behalf of the United States and the Interstate Commerce Commission.

Many of the arguments advanced by appellees were anticipated and all necessary reply thereto is contained in the

opening brief for appellants. It is desirable, however, to deal briefly with some of the more outstanding errors of fact and fallacies in argument as presented in the briefs on behalf of appellees. For convenience in referring to the pages on which is contained the matter to which reply is addressed, we indicate the pages of brief in parenthesis and use the symbols (c) when the page reference is to the brief on behalf of the carriers and (u) when the page reference is to the brief on behalf of the United States and the Interstate Commerce Commission. When a statement to which reply is made is contained at several points, as many of them are in the brief of appellees, ordinarily reference will be given to but one place where the statement is found. References to our own brief are indicated by (Br.).

The Questions

Counsel for the United States and the Interstate Commerce Commission say (u. 2-3) that there are four questions in this case, i. e., (1) whether the interstate switching rates established in the *First Report* constituted a valid basis of reasonable rates for use by the Commission in reaching its determination that the carriers' intrastate rates caused unjust discrimination against interstate commerce; (2) whether the Commission's findings of fact were adequate; (3) whether there was substantial evidence to support such findings, and (4) whether the Commission abused its discretion in denying the petition for rehearing based on allegations of changed conditions.

Counsel overlooked that there are three additional important questions before this Court, i. e., (a) whether or not the difference in fact in the amount of service rendered on intrastate traffic, on the one hand, as compared with interstate traffic, on the other, justified the difference between the intrastate and interstate rates; this is a subject with which we dealt on pages 128 to 136 and 156 to 158 of our opening brief; (b) whether or not the order actually em-

braces intrastate rates to be applied for 1-line hauls on railroads which do not operate 1-line in interstate commerce, and, if it embraces such rates, whether or not such an order is a valid exercise by the Commission of its powers; with this latter question we dealt on pages 105 to 107 inclusive of our opening brief; and (c) whether the order in its application to grain switching rates was valid.

FACTS RELIED UPON BY APPELLEES WHICH ARE IRRELEVANT

In support of the Commission's finding which compels the same rates in cents per hundred pounds on intrastate as on interstate traffic, appellees stress and emphasize the fact that some of the shippers who appeared before the Commission requested an all-commodity basis within the Chicago switching district for application alike to intrastate and interstate traffic. (c.10; u.56-7).

The facts stated have no significance or controlling weight in this case. The desire of one or several shippers for a uniform rate basis does not bear upon the question of whether a difference in rates results or does not result in unjust discrimination against interstate commerce. Certainly the Illinois Commerce Commission and the Public Service Commission of Indiana may not be deprived of the powers conferred upon them by statute to determine the reasonableness of intrastate rates because of the desire of one or several shippers for rate uniformity. The Interstate Commerce Commission in making both its finding as to the reasonableness of rates and its finding as to unjust discrimination was by statute required to predicate such findings on evidence as to transportation circumstances and conditions. The Interstate Commerce Commission is not the traffic manager of the railroads and is not empowered to require rates otherwise lawful to be changed because it may believe such a change desirable or beneficial.

If the order of the Commission complained of were otherwise void, it can not be sustained because it meets the

wishes of some, or even all, shippers for a uniform all-commodity basis.

The Matter of Competition Between Shippers Is Not Now in Issue.

On page 12, under the heading "Competition", railroad appellees refer to the location of railroads and industries, with reference to the state line separating the Indiana section from the Illinois section of the Chicago switching district and assert that there is competition between such shippers. But competition between the industries is not now in issue, since the Commission expressly finds (R. 166) that the maintenance of lower intrastate switching rates than those approved for interstate switching

> "has not been shown to have caused or to cause any undue preference and advantage of persons or localities in intrastate commerce, or any undue prejudice and disadvantage to persons or localities in interstate commerce."

The discussion of competition between shippers, therefore, has no part in this case.

The Findings and Order of the Commission In Docket 24950 Furnish No Support For the Order Sought To Be Enjoined.

Shortly after the Commission issued its *First Report* the Acme Steel Company and certain other shippers filed a formal complaint with the Commission under Docket 24950 assailing the increased rates on interstate traffic as unreasonable in violation of section 1 of the Act. The further hearing in Docket 19610 presented the sole issue as to the lawfulness of the relation of rates and charges for switching in intrastate commerce to the rates prescribed for like switching in interstate commerce. (R. 139).

The hearing in Docket 24950 was separate from the further hearing under the section 13 issue in Docket 19610, but proceeded under a ruling from the presiding Examiners that the evidence received in either case might be used in the other, in so far as it was material to the issues contained therein. (R. 943, Tr. 2150.)

It will be noted by reference to our original brief (Br. 74) that every effort made, both by formal motions and by request at the hearing to include in the evidence at that time testimony as to the current costs of switching intrastate and interstate traffic, was unavailing. There were two classes of testimony presented in the formal complaint case: (a) criticism of the cost study as applied in 1926 and 1927 and (b) a showing that the increased rates were prohibitive and resulted in a diminution rather than an increase in income.

The finding made in Docket 24950 was that the interstate rates assailed "are not unjust or unreasonable. The complaint accordingly will be dismissed." (R. 156). The finding made was wholly negative. It was equivalent to a finding that the complaining shippers had not borne the burden of proving that the assailed rates were excessive.

In that case the complaining shippers could do little more than criticize the 1927 study and make comparisons with switching rates in other localities. The latter comparisons were rejected by the Commission on the ground that no actual costs were shown for the compared districts and that the average hauls in the compared districts were not the same as in the Chicago district. (R. 149). The defendants (Railroad appellees) offered no evidence in the complaint case (R. 145). No new cost study was introduced and consequently, in so far as costs which attached to the particular traffic under consideration are concerned, i. e., that switched between points within the Chicago switching district, there is not a single syllable of evidence in the record in Docket 24950 which is new in the sense that it is in addition to the evidence taken at the original hearings in No. 19610.

Consequently, appellees are completely in error in asserting (c. 42) that the hearings had "brought the record down to date with respect to all issues involved including the reasonableness of the interstate switching rates."

THE FACT THAT NO EFFORT WAS MADE TO ENJOIN THE ORDER OF JULY 31, 1931, WHICH WAS CONFINED TO INTERSTATE RATES IS WITHOUT SIGNIFICANCE.

Attention is called (c.32) to the fact that the appellants did not seek to enjoin the order of July 31, 1931, issued in connection with the *First Report*, the thought apparently being that, since no attempt was made to enjoin that order, appellants are now foreclosed from questioning the validity of the finding made in connection therewith as to the reasonableness of the interstate rates. Appellants overlook the fact that the shippers concerned with the interstate rates would have had no standing in any court in a suit to enjoin it. Even if the finding of reasonableness was invalid, the rates could have been made effective by the voluntary act of the carriers and no court could have compelled the Interstate Commerce Commission to restrain the increase on interstate traffic. Compare *Sprunt & Sons* v. *United States*, 281 U. S., 249. The Illinois Commerce Commission and the Public Service Commission of Indiana had no right to complain in court since the scope of the order neither affected intrastate traffic nor interfered with state sovereignty.

However, the fact that the order mentioned could not have been reviewed as it applied to intrastate traffic does not prevent appellants from herein questioning the sufficiency of the finding then made as to the reasonableness of the interstate rates. In this cause a valid and adequate finding as to reasonableness is a necessary prerequisite to the validity of the section 13 order sought to be enjoined.

The point we make is that a valid finding as to the reasonableness of interstate rates is necessary whenever the

Commission enters an order which prescribes the interstate rates as the minima for intrastate traffic. We do not understand that appellees deny that this is a correct statement of the law. Our further point is that the finding as to the reasonableness of the interstate rates is not a valid finding because it was not supported by substantial evidence. That point is covered by pages 108 to 122, inclusive, of our opening brief.

THE ORDER OF THE COMMISSION IS NOT SUPPORTED BY THE NECESSARY SUBORDINATE FINDINGS

In our opening brief at pages 83 to 105, inclusive, we pointed out that in six different and distinct particulars the Commission failed to make subordinate findings which are necessary to support an order entered under section 13 of the Act. Appellees argue (c.63) that the order is properly supported because, under the law, there is no requirement for anything but the conclusion of the Commission, together with its decision, order or requirement in the premises, it being further said that whatever else is contained in the report is there only as a matter of "good practice." Appellees do not correctly state the rule since this Court, in no uncertain terms, has held that complete statements by the Commission showing the grounds upon which its determinations rest are quite as necessary as are the opinions of lower courts setting forth reasons on which they base their decisions, *Beaumont, S. L. & W. R. Co.* v. *United States,* 282 U. S., 74, 86. Precise and specific application of this rule was made in *Florida* v. *United States,* 282 U. S., 194.

Among the subordinate findings which we asserted should have been, but were not, made is a finding that the intrastate traffic upon which the rates subject to the order were assessed is of a like kind and similar to the interstate traffic in respect to the conditions under which switching service is rendered. (Br. 86-9). Appellees take the

position that switching service and switching rates must be dealt with on the average; that it is entirely proper to average state with interstate traffic, and that, consequently, there is no necessity for a specific affirmative finding of the kind above mentioned (c. 72-3).

For the sake of the point under consideration, let us assume that the rates prescribed are proper for the average intrastate and interstate service *combined*. That fact will not support the requirement of an order that the rates shall be the same for intrastate and interstate traffic unless the evidence shows and the Commission finds, that the average service on intrastate traffic is comparable with the average service on interstate traffic.

Initially the power of the Commission to prescribe rates does not extend beyond those applicable to interstate traffic and in the prescription of such rates the Commission must confine its consideration to conditions surrounding such interstate traffic. The State Commissions have exclusive power to regulate intrastate charges unless and until such charges are in violation of section 13 of the Act. In exercising the powers conferred upon them by the respective State statutes the State Commissions must confine their consideration to conditions which surround intrastate traffic.

Let us assume that, proceeding within their respective provinces, the Interstate Commission prescribes a rate of $1.00 because the average interstate service justifies that charge, and the State Commission prescribes a maximum charge of 50 cents because the average service on intrastate traffic justifies such a charge. In such case the Interstate Commerce Commission would have no power to prescribe a charge of 75 cents for intrastate and interstate traffic combined on the ground that such a charge was justified by the average of the two. Intrastate service cannot be burdened with charges due to improper apportionment of property costs. *Smith vs. Ill. Bell Telephone Co.*, 282 U. S., 133-151. In essence, however, that is precisely what the Interstate Commerce Commission has done in this

proceeding, and it has imposed that requirement without making a finding that the average service on interstate traffic is similar to the average service on intrastate traffic. Elsewhere we deal with the proposition that the evidence fails to show a similarity of intrastate to interstate commerce, and in fact shows a dissimilarity in service which fully justifies the difference in rates.

We have also asserted that another necessary finding is that an increase in the intrastate rates will provide additional income for the carriers (Br. 89-95). Appellees make repeated reference to Exhibits 99, 101 and 103, and the comments of the Commission thereon, as being the equivalent of such a finding. (c. 47-8; u. 48-50). The exhibits mentioned consist of the arithmetical application of future rates to traffic which moved in September, 1926, in one week in November, 1931, and in one week of January, 1932, and purport to show that, if the intrastate rates sought had been applied to traffic which moved in the period stated, the carriers would have received greater revenues. In its *Second Report* the Commission observed that if these exhibits purport to deal with prospective revenue, they rest on the assumption that all the intrastate traffic which moved in the past would continue to move at the higher rates, it being further said: "This is not a fair assumption". (195 I. C. C., 117, R. 165).

It is true that on the same page of its *Second Report* the Commission stated that it was "not convinced" that any substantial portion of the traffic moving by rail intrastate would be diverted to other forms of transportation if the rates for interstate traffic were applied thereto, and it is also true that, on page 118 of its *Second Report* (R. 166) the Commission said:

> "the record nevertheless is convincing that the carriers will derive a substantial increase in revenue if the intrastate rates are increased to the interstate basis, and we so find."

The statement last quoted is obviously nothing more than a mere conclusion with no indication of the basic facts on which it is predicated, and standing alone will not support the order sought to be enjoined.

In so far as the Commission's lack of conviction as to the substantial diversion to other forms of transportation is concerned, it apparently rests on the following statement (195 I. C. C., 117, R. 165):

> "However, having in mind that the average single-line intrastate haul in Illinois is nearly 15 miles and in Indiana 6.3 miles; that highway traffic conditions in the Chicago district are congested, involving material delays in the movements of trucks; that the differences between the intrastate and interstate rates at present are generally for single-line hauls only $1.50, and $3 after expiration of the emergency increases; and also that a very large proportion of the intrastate traffic is handled in 1-line movements, we are not convinced that any substantial proportion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if the rates found reasonable for interstate traffic are applied thereto."

In the first place, the Commission makes a serious error in stating "that the average single-line intrastate haul in Illinois is nearly 15 miles." That figure, which the Commission used, was the average haul of the Illinois intrastate cars embraced within the cost study. We showed at page 17 of our original brief that, out of 8,968 cars Illinois 1-line intrastate, only 1,951, or 22 per cent, were embraced in the cost study. At page 36 we show that the average haul on these 1,951 cars was 14.7 miles, but on page 37 of our original brief we show that the average haul on the 7,017, or 78 per cent of Illinois intrastate cars, not embraced in the study, *was only 5.4 miles.* If the Commission had included both the cost-study and non-study cars, the average haul intrastate 1-line would have been 7.4 miles, or less than half what the Commission states in the above

quotation is the average single-line intrastate haul in Illinois.

The Commission next finds (R. 165) as a reason for its lack of conviction, "highway traffic conditions in the Chicago district are congested, involving material delays in the movements of trucks." There is no real evidence of such congestion as results in material delays in the movements of trucks, or impairs the competitive ability of the trucks. This record shows (R. 1140, Tr. 3012) that, since the hearings in the first case closed in 1928, a number of highways have been paved, some have been widened, trucks are more numerous, and competition between trucks is keener.

The Commission correctly stated the fact that the difference between intrastate and interstate rates for single-line hauls is $3.00 per car after expiration of the emergency increases (*Fifteen Per Cent Case, Ex Parte* 103, 191 I. C. C., 361, 370, decided March 7, 1933). The Illinois Commerce Commission permitted the 10 per cent increase in the intrastate rates concurrent with the surcharges authorized by the Interstate Commerce Commission which, by its decision last referred to, continued in effect until and including September 30, 1933.

It will be noted that in its first decision of March 7, 1933, in the *Fifteen Per Cent Case*, the Commission particularly exempted the interstate rates which it had prescribed in the Chicago switching district from the application of any surcharges, which it had authorized for other services and on practically all commodities throughout the nation.

The fourth reason for lack of conviction on the part of the Commission that any substantial portion of the traffic would be diverted to other forms of transportation is that "a very large proportion of the intrastate traffic is handled in 1-line movements." We have never been able to understand definitely what the Commission meant

by this statement. We asked in our petition of August 15, 1933, that the Commission (R. 181) make its order definite and precise as to whether there is to be any increase of the 1-line intrastate rate of those carriers which publish no interstate 1-line rate and have no possible 1-line interstate haul. That motion was denied.

It may be that by the clause last quoted the Commission was indicating its belief that the effect of its section 13 order would not be to increase 1-line charges of carriers which perform no 1-line interstate hauls.

Another finding required to support the order sought to be enjoined is one which defines the interstate commerce being discriminated against and which defines the manner in which the alleged unjust discrimination occurs in fact. (Br. 98-100). Appellees argue (c. 52-53) that this discrimination in fact is shown by two types of exhibits, first an exhibit covering 856 cars which, after the effective date of the increased interstate rates, moved over what the carriers termed unnatural intrastate routes, it being asserted by them that the normal routes were interstate. This is the exhibit on which the Commission comments on pages 112 and 113 of the *Second Report* (R. 160-61) and with which we dealt on pages 42 to 45 of our opening brief.

Regarding this exhibit appellees state (c.49):

> "The record further shows that the switching cost alone was materially greater in handling the car via state routes in order to protect the shipper's request for state movement."

an illustration is given of one car for which it is asserted the cost over the natural interstate route would have been $10.44 while the cost via the alleged unnatural state route was $21.78. Reference to the record (R. 955, Tr. 2193-97), indicates that these allegations of costs were derived from the 1927 study as applied to the 1926 traffic. On cross-examination the witness was pressed to tell the present-day difference in costs as between the alleged natural and unnatural routes, and in reply stated (R. 1025, Tr. 2501):

> "I could not tell you at the present time whether the movement via the red line (intrastate route) is more expensive or more costly to the carriers than via the black route (interstate route)."

And again (R. 1025, Tr. 2503):

> "Aside from the movement of those particular cars via the particular routes, as shown on the map, I did not make any investigation as to cost, character of service, or anything of that kind."

It will be recalled that the Commission in commenting on this exhibit said (R. 161):

> "The record discloses that in some instances these unnatural or intrastate routes are not only shorter but involve less service. On cross-examination it developed that a considerable haul, in several instances amounting to approximately 20 miles, in connection with the so-called natural or interstate routes, could be saved by the use of more advantageously located interchange connections. A number of such movements were pointed out, and in those cases what was the natural haul over an interstate route would become the shorter haul via an intrastate route, and would involve the most economical movement."

This comment of the Commission is certainly not a finding as to unjust discrimination in fact.

The second item of evidence which it is asserted shows discrimination against interstate commerce is contained in the exhibits giving ratios and percentages of interstate and intrastate traffic to the entire traffic prior and subsequent to the increase in the interstate rates on December 10, 1931. These exhibits are summarized and commented upon on pages 40 to 41 and 122 to 125 of our opening brief, and show for the composite of 1-, 2- and 3-line hauls that prior to the increase the interstate traffic constituted 57.53 per cent of the whole, while subsequent thereto it constituted only 53.25 per cent of the whole. Counsel for ap-

pellees imply that the effect of these exhibits is to show an increase in intrastate traffic at the expense of interstate traffic. (c.15; u.21).

In this connection, and before treating specifically of these figures which deal with November, 1931, prior to the increase, and January, 1932, subsequent to the increase, we call attention to the fact that of the traffic moved in September, 1926, in the Chicago switching district, 40.29 per cent was interstate traffic, which is substantially less than the percentage of either November or January shipments referred to. However, the witness who introduced the exhibit on cross-examination stated (R. 1021, Tr. 2485-6):

> "I have no information in my possession to give the Commission from which it could find that business that moved interstate had been lost to somebody intrastate by reason of this rate situation. * * * We make no contention as to that as a basis for setting aside the lawfully constituted rates of the State of Illinois and the State of Indiana."

The mere statement by the Commission of the percentages claimed is not the equivalent of a finding that the disparity between intrastate and interstate rates resulted in a diversion from and a discrimination against interstate traffic. Yet, other than the comments of the Commission on the exhibits above mentioned appellees fail to direct the attention of the Court to any statement in the *Second Report* which even slants at being a finding which defines the unjust discrimination in fact.

As bearing on this question of diversion from interstate to intrastate traffic, appellees' brief (c.16) points out that prior to the effective date of the increased interstate rates, interstate traffic moving within the district was 57.53 per cent of the whole, and subsequent to the increase in rates was 53.25 per cent; and that between Chicago Heights and the Chicago switching district, prior to the effective date of

the increased interstate rates interstate traffic was 47.07 per cent and subsequent was 28.62 per cent.

It is argued that these reductions in percentage of interstate traffic was due to a change of routing by the shippers whereby what moved via an interstate route prior to the increase in interstate rates thereafter moved by an intrastate rail route. Inasmuch as the greatest change took place in the movement between Chicago Heights and the district, we have analyzed for the purpose of this argument, Exhibits 102, 104 and 106, which show the commodities moving during the week of November, 1931, and the week in January, 1932, in 2-line and 3-line hauls. There were no 1-line hauls between Chicago Heights and the district as the Chicago Heights Terminal Transfer Company which serves practically all of the industries, does not reach the District with its own rails but only in connection with other carriers. There were no 4-line hauls in interstate service between Chicago Heights and the District, and therefore the following table is limited to 2-line hauls and 3-line hauls.

The following table shows all of the commodities which moved in 2-line hauls and in 3-line hauls during the two periods of one week referred to:

Commodity		Intrastate-Illinois		Interstate	
No.	Name	1931 (Exh. 102)	1932 (Exh. 104)	1931 (Exh. 106)	1932 (Exh. 106)
	Two-Line Hauls				
35	Clay, Gravel, Sand and Stone	4	2	—	—
37	Asphaltum	—	—	8	6
45	Refined Petroleum and Its Products	—	—	13	12
49	Iron, Pig and Bloom	—	4	—	—
51	Bar and Sheet Iron, Structural Iron and Pipe	3	2	1	1
66	Chemicals and Explosives	—	—	1	—
69	Other Manufactures and Miscellaneous	—	—	1	2
	Total	7	8	24	21

Three-Line Hauls

16	Other Products of Agriculture	4	1	1	1
31	Coke	—	—	1	—
45	Refined Petroleum and Its Products	1	3	—	—
49	Iron, Pig and Bloom	—	6	—	—
50	Rails and Fastenings	—	1	—	—
51	Bar and Sheet Iron, Structural Iron and Pipe	6	5	9	3
56	Lime and Plaster	—	1	—	—
58	Agricultural Implements and Vehicles	—	1	—	—
66	Chemicals and Explosives	3	5	—	—
69	Other Manufactures and Miscellaneous	17	9	13	2
	Total	31	32	24	6

From the foregoing table it appears that there was no 2-line movement interstate of clay, gravel, sand or stone either in the November or January week and that the intrastate cars decreased from 4 in November to 2 in January. There were no 2-line hauls of asphaltum and refined petroleum and its products intrastate in either week but interstate there was a decrease from 8 cars of asphaltum to 6 cars. The 13 cars interstate in November of refined petroleum and its products decreased to 12 cars in January. Since neither of these commodities moved intrastate in either period there was no diversion to intrastate traffic. A similar situation is revealed as to chemicals and explosives and "other manufactures and miscellaneous," as there was no movement intrastate in either week. Interstate there was one car each under these classifications in November, 1931, while in January there was no movement of chemicals and explosives, but there were two cars of "other manufactures and miscellaneous."

Here we have in the aggregate 2-line hauls an increase in the intrastate of 14 per cent and a decrease in interstate of 12.5 per cent. Yet this analysis shows that there was no diversion of any sort, kind or description of interstate traffic in November, 1931 to intrastate in January, 1932.

Turning now to 3-line hauls: of the 3-line hauls of bar and sheet iron, structural iron and iron pipe, 9 cars were handled interstate and 6 cars Illinois intrastate during the November week. In the January week the interstate movement dropped off from 9 cars to 3 cars, while the intrastate movement dropped off from 6 cars to 5 cars. Certainly there is no room for complaint that the 6-car decrease in interstate was due to a diversion to a rail intrastate route.

To pursue the illustration further, "other manufactures and miscellaneous" in the November week were 17 cars Illinois intrastate and 13 interstate; in January there were only 9 cars intrastate and 2 cars interstate. There was no movement of the following articles during either the November or January week, interstate: Refined petroleum and its products, pig iron and bloom, rails and fastenings, lime and plaster, agricultural implements and vehicles, chemicals and explosives; each of these items had a movement intrastate in either November and/or January. Of these items just named, none of which moved interstate in either week, we find that intrastate refined petroleum and its products increased from 1 car in November to 3 cars in January. No intrastate pig iron or bloom moved in November and 6 cars moved in January. No rails and fastenings moved intrastate in November and 1 car moved in January. No intrastate cars of lime and plaster, or agricultural implements and vehicles moved in November but there was a movement of 1 car of each of these commodities in January. Intrastate chemicals and explosives increased from 3 cars in November to 5 cars in January. Of the total intrastate increase in these various commodities amounting to 13 cars, or more than 300 per cent, not one of them had moved interstate in November, 1931, when the rates were the same intrastate and interstate, and therefore if cannot be contended there was any diversion from interstate rail routes to intrastate rail routes.

The summary of the movement for all of the 3-line hauls shown in the exhibit indicates an increase of 1 car intrastate

in January over the intrastate movement in November, and a decrease of 18 cars interstate in January as compared with the November week. The percentage decrease in the interstate January week under November is 75 per cent and yet our analysis shows that in no case was there a diversion from the interstate to the intrastate rail route.

Here is a clear demonstration of the necessity for analyzing the individual commodities in order to determine whether there was any actual diversion from the interstate route to a rail route. A mere statement of changes in percentages proves nothing.

In this connection we ask particular attention to the fact that many shippers, who testified in the first hearing prophesied that an increase in rate would result in a diversion to competing forms of transportation. We insist that the exhibits above referred to showing a decrease in percentage of interstate traffic in the week of January, 1932, as compared with the week of November, 1931, is complete confirmation of the above prophesy.

We have asserted that, in order to support the order, the Commission should have made a finding showing separately for interstate traffic the property used, revenues, and expenses, and like information for intrastate traffic so as to make it possible to compare revenues with costs for intrastate switching traffic considered separately from interstate switching traffic. (Br. 100-2.)

Appellees give two reasons (c.54-7) in support of their argument that this was not necessary: First, that some of the shippers desire a uniform all-commodity basis. The right of the State Commissions to regulate intrastate rates can not, however, be subordinated to the desires of a few shippers.

Secondly, appellees argue that *Smith* v. *Illinois Bell Telephone Co.*, 282 U. S., 133, has no application in connection with this point because that was a confiscation case and did not deal with discrimination against interstate

commerce. We cited and quoted from the case mentioned at page 101 of our opening brief.

The case is squarely in point because this Court there stated that a separation of intrastate and interstate property, revenues and expenses of a public utility "is essential to the appropriate recognition of the competent governmental authority in each field of regulation." This case raises the question of what authority shall be recognized in regulating intrastate charges in the Chicago switching district. There is a conflict in respect to this matter between the Illinois Commerce Commission and the Public Service Commission of Indiana, on the one hand, and the Interstate Commerce Commission, on the other. The Interstate Commerce Commission has sought to invade the field of state regulation and has directly rested its orders on the relation of revenues to costs for the traffic involved. In dealing with that relation the Interstate Commerce Commission has not, however, separated the intrastate traffic from the interstate traffic but has combined the two. In so doing it has failed to observe the principle enunciated by this Court in *Smith v. Illinois Bell Telephone Company, supra,* a principle which has apt application in any case where the question is as to the division of the field of regulation between Federal and State authorities.

Nothing contrary to what we have just said is found in *Wisconsin Railroad Commission* v. *C. B. & Q. R. R. Co.*, 257 U. S., 563, from which the railroad appellees quote at page 59 of their brief. In that case this Court sustained an order of the Commission requiring the intrastate passenger fares in Wisconsin to be made the same, *mile for mile*, as the interstate fares. The order was sustained as being a proper exercise of the power of the Commission under section 13 (4) of the Act as well as under section 15a. In discussing the valuation required for the purposes of section 15a to be ascertained pursuant to section 19a, this Court held that it was not necessary for the Commission to value separately

the property used in the intrastate and interstate service, resting its construction on the language of section 15a. As stated, that was a mileage scale case. To have valued each mile of road in proportion to use and then to have prescribed rates which would have produced a like return on intrastate and interstate commerce, was, in the type of case under consideration, obviously unnecessary. The same result is achieved by prescribing the same rates, mile for mile, on intrastate as on interstate traffic.

In the instant case, however, we have an entirely different type of case. All of the findings in the order complained of are supported, if they are supported at all, by a cost study. The unjust discrimination alleged to exist obtains, if it obtains at all, because the relation of revenue to costs on intrastate traffic is different than it is on interstate traffic. In such case, where the primary foundation for all orders is in an ascertainable relation of revenue to cost, there is no escape from the proposition that the Interstate Commerce Commission does not have the right to invade the field of regulation theretofore occupied by the respective states unless it is able to and does find that the relation of revenue to costs is different on intrastate traffic than on interstate traffic. Necessarily, therefore, the principle of *Smith* v. *Illinois Bell Telephone Company, supra,* is controlling.

The Order of the Commission Is not Supported by Substantial Evidence.

It can not be denied that a finding as to the reasonableness of the interstate rates is a necessary prerequisite to a section 13 order if such interstate rates are to be prescribed as the minimum rate on intrastate traffic. We have asserted that the finding made by the Commission as to the reasonableness of interstate rates is not supported by substantial evidence (Br. 109-122).

If there is any evidence to support that finding, it must

be either in the cost study or in the comparisons with line-haul rates to which the Commission referred on pages 709 and 710 of its *First Report* (R. 73-4).

In so far as comparisons of line-haul rates are concerned, they are relied upon by the appellees as constituting evidence. (u.13). We have argued that such comparisons of line-haul rates were not introduced in evidence and on the authority of *United States* v. *Abilene & S. Ry. Co.*, 265 U. S., 274, can not be treated as evidence in support of the order. Appellees have no answer to this point, ignoring it in their briefs.

In so far as the cost study is concerned, we have commented upon the inaccuracies and the defects therein which caused the Commission itself in its *First Report* to find (177 I. C. C., 705, R. 69):

> "We can not, however, accept the cost study as a definite yardstick by which alone to measure the reasonableness of the rates under consideration."

Appellees make no attempt to explain how the cost study can possibly be relied upon in the light of its rejection by the Commission. That the cost study was properly rejected by the Commission is made abundantly plain by our analysis of some of its more outstanding defects at pages 11 to 27 and 109 to 117 of our opening brief. Appellees make no attempt to reply to what is there said.

Counsel for the United States and the Commission do call to the attention of the ~~court~~ (u.33) that at the first hearings the carriers were advised by the Commission that the responsibility for a representative cost study rested with them and that they assumed the risk of not having such a representative study.

If the cost study be representative it must be because the cost of carriage on the 20 roads not included within the study was substantially the same as on the 15 roads included within the study. It must appear that for these two groups of carriers substantially the same quantity of

switching service was necessarily rendered in making an average 1-line, an average 2-line or an average 3-line haul. The briefs of appellants can be searched in vain for any reference to *evidence* which even purports to show that there was this similarity between the 15 study roads and the 20 non-study roads. Our point goes far beyond the contention that the inclusion of the Elgin, Joliet & Eastern which, generally speaking, operates largely outside of the district, and the exclusion of the Chicago Junction, which in number of cars handled is one of the most important lines wholly within the district, rendered the study non-representative. Our basic contention is that there is no proof tending to show that the services of the 20 non-study roads were similar to the services on the 15 study roads.

As bearing on the representative character of the lines embraced in the study we call attention to the fact that Exhibit No. 13 shows that of the 11,950 study cars 1-line the following carriers had a total of 312 cars, made up of Chicago, Burlington & Quincy, 30; Chicago, Milwaukee & St. Paul, 64; Chicago & North Western, 40; Chicago, Rock Island & Pacific, 79; Illinois Central, 99. The Elgin, Joliet & Eastern had in the costs study 6,854 cars, involving a movement outside the district.

There were 5 cost study lines, viz: Illinois Northern; Chicago, West Pullman & Southern; Pullman Railroad; Chicago Short Line; and Chicago & Illinois Western, that had no 1-line cars in the cost study. In the face of this fact, how can it be contended that the Chicago Junction, with its 1,778 intrastate 1-line cars, as appears from Exhibit 9 should not have been included in the cost study. The carriers included 10 railroads in the cost study having in the aggregate only 312 intrastate 1-line cars. There were only 1,951 Illinois intrastate 1-line cars in the study. Deducting the 312 cars of the five trunk lines above named we have 1,639 cars 1-line for all other cost study lines,

which is less than the Chicago Junction 1-line cars that were not included in the cost study.

The vice of using a cost study on only 15 roads while revenues on 35 were under consideration is emphasized by the reference of appellees (u.12) to a table contained in the *First Report* (R. 54) in which the Commission purports to show that the ratio of operating expenses to weighted average revenues under the existing rates was 93.14 per cent for 1-line hauls, 92.83 per cent for 2-line hauls, and 86.51 per cent for 3-line hauls. Corresponding ratios shown under the carriers' proposed rates are 77.55 per cent, 63.77 per cent, and 65.62 per cent. Following the table the Commission states (R. 54):

> "It is quite evident from the high ratios of operating expenses to the revenues that the present rates are too low."

We directed attention to this table on page 25 of our opening brief, pointing out that it involved a comparison of revenues on study and non-study cars combined with costs developed for study cars alone. *This is not a comparison of like with like.* There is no evidence at all in the record which even purports to show that the cost of transporting non-study cars was the same as the cost of transporting the study cars. The Commission did not have before it any evidence as to the true operating ratio in respect to study and non-study cars combined. Consequently, the finding quoted by appellants is wholly unsupported by the evidence.

In discussing the cost study, appellees assert that at the further hearing in the section 13 case it was shown that unit costs had increased since the cost study was made (c.18; u.18). The evidence mentioned is commented upon by the Commission in that portion of its *Second Report* dealing with the formal complaint, Docket 24950, and purports to show that the total operating expenses per car for the eight switching carriers included within the 1927 study had increased from $3.86 in 1928 to $4.04 in 1931 (195 I. C.

C., 98, R. 146). At the same place the Commission mentions a reduction for 1931 as compared with 1928 in operating revenues which exceeded the reduction in operating expenses. Reference is also made to the increased operating ratios, 1931 over 1928.

This evidence had absolutely nothing to do with the cost study and did not pertain to the same traffic as was involved in the cost study. It related to all traffic handled of which the traffic switched locally within the Chicago switching district constituted a minor portion. Intradistrict switching constitute only about 5 per cent of the total operations, says the commission (R. 50). The evidence did not have the effect of showing the trend of present-day costs on switching traffic. Obviously, if the costs stated did apply to switching traffic, being only $4.04 per car in 1931, the rates prescribed by the Commission, of which the lowest was 3 cents per hundred pounds, minimum 60,000 pounds or $18.00 per car, would be wholly out of line and extortionate.

One of the most important points in this case involves the question of whether or not the intrastate traffic subject to the order is of a like kind and similar to the interstate traffic in respect to the amount of switching service and the conditions under which the same is rendered. On behalf of appellees it is said (c.46) that the intrastate and interstate traffic is handled in the same trains and that this constituted a sufficient showing of similarity of conditions. Reference is made (u.54) to the finding of the Commission in the *First Report* (R. 75) that "the record does not disclose any difference in the conditions surrounding the handling of the interstate and intrastate movements," and to the finding in the *Second Report* (R. 166) (c. 51) that "the transportation conditions throughout the Chicago switching district are substantially similar."

The statements just quoted are glittering generalities and mean nothing when a particular transportation service is under consideration.

If distance and other circumstances to which we later call attention are disregarded, it is unquestionably true that transportation conditions on the north side of Chicago are very much the same as on the south side of Chicago as well as very much the same as they are in the Indiana portion of the district. It is likewise true that carload traffic from Chicago to Michigan City, Ind., is handled in the same trains and by the same crews as carload traffic from Chicago to New York City, N. Y. It is likewise true that conditions generally throughout the area between Chicago and New York, Michigan City being intermediate, are substantially similar.*

The facts just stated, however, fall far short of justifying the prescription of a Chicago-New York rate as the minimum rate on Chicago-Michigan City traffic. Nevertheless, differing only in degree, that is exactly what the Commission has done in the instant proceeding.

It will be noted that the Commission made no finding that the *quantity of service* rendered on intrastate traffic was the same as the *quantity of service* rendered on interstate traffic. Consequently, when counsel for railroad appellees state (c.10):

> "The evidence before the Commission showed that the services rendered in performing intrastate switching and in performing interstate switching within the district are alike and of the same character."

they make a gratuitous statement and without support in the record.

On page 11 of the brief counsel for railroad appellees assert that the appellants admitted that there is no distinction in the district in the handling of state and interstate traffic. The admission referred to went only to the point, which never has been denied, that in a given transfer train will be found both state and interstate traffic. That is not

*In the *Eastern Class Rate Investigation*, 164 I. C. C., 314, the Commission prescribed a common level of mileage scale rates over this entire territory.

to say, however, that the aggregate of the transfer services, classification services and industrial switching services on intrastate traffic are as great as the aggregate of the services on the interstate traffic. Since the carriers failed to develop costs on intrastate traffic separately from those on interstate traffic it is impossible from evidence in this record to tell how the aggregate of such services does compare, except as may be measured by the matter of average distance of haul. The carrier appellees assert (c.19) that the element of distance "as exampled in the transfer service" is unimportant and in support of this they state:

> "The record shows, by computations from Exhibits 90 and 91, that of the four railroads in the Chicago switching district that cross the state line, namely, the Baltimore & Ohio Chicago Terminal Ry.; Elgin, Joliet & Eastern Ry.; Indiana Harbor Belt Ry.; and the Pennsylvania Railroad—all four of which were used in the cost study—on interstate traffic, the weighted average number of elements of service composing an index number* was 14; similarly, the average number of elements of service composing an index number on Illinois intrastate traffic was 13.7; and on Indiana intrastate movements, the average number of elements of service composing an index number was 12.4. Or, stated in another way, using the interstate elements of service composing an index number of 100 per cent, Illinois intrastate represents 97.9 per cent and Indiana, 88.6 per cent.

The figures stated can not be checked by us except after an elaborate and detailed computation for which time does not permit. Even if the computations were accurate, they add nothing to the record. We are concerned with services on 35 railroads. The computation made is confined to four.

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*All cars moving over a certain route normally receive the same elements of service peculiar to that route. The total cost per car of all elements of service embraced in a given route are combined under an index number. Or, stated in another way, all different services rendered in furnishing transportation from one industry to another, within the district, are combined under one index number for each railroad."

What the situation is on other lines is not disclosed. Furthermore, a mere comparison of the number of elements of service means nothing. Each different element carries a different cost and it may well be that the average of 13.7 different elements on Illinois intrastate traffic produces an aggregate cost very substantially less than the average of 14 different elements of service for interstate traffic.

Furthermore, even as computed, the averages could not possibly be *weighted* averages because there is no showing in the record as to the number of cars to which each index number attached. Without information as to the number of cars, a weighted average could not be computed.

The only possible yardstick which the record affords us for comparing average quantity of service performed on intrastate traffic with the average quantity of service performed on interstate traffic is in the matter of distance and the relation of distance to revenue, with which we dealt on pages 36 to 39, 128 to 136, and 156 to 158 of our opening brief. It is there shown, for example, that on 1-line traffic the average hauls are Illinois intrastate 7.4 miles, Indiana intrastate 6.1 miles, and interstate 15.3 miles. Although appellees assert that the matter of distance is not controlling, there can be no escape from the conclusion that these differences in distance do have a material effect on the matter of relative cost, even though the precise amount of the difference in cost can not be determined. For example, it goes without question that the following elements of cost in switching services are necessarily affected by distance:

(a) The cost of building and maintaining the roadbed;

(b) The cost of maintaining equipment since the wear and tear in a 15-mile haul is certainly greater than in a 7-mile haul;

(c) The cost of fuel and lubrication and the wages of the train and engine crew are certainly affected by distance because of the additional time necessary to perform the longer haul. It is impossible to believe that it takes a train

going 7 miles as long to get to its destination as it does a train going to a destination 15 miles distant.

(d) In addition to costs of the car above described, there are unquestionably more classification services and intermediate switching performed on hauls which average 15 miles than on hauls which average 7 miles. Exhibit 33 diagrams movements between various points in the Chicago switching district and makes it clearly apparent that, as the length of the haul increases, there is a like increase in the number of yards through which the movement must be made. This necessarily increases the number of transfer movements, as well as the number of classification services and, consequently, it can not, in truth, be said that a difference in the length of haul affects only the costs which attach to transfer service.

Nor is the cost of transfer considered alone an insignificant item.

In Exhibit No. 13, page 38, it is shown in the analysis of switching service and costs for 1-line hauls, according to elements of service, that the average classification of loaded cars and of the empty cars before loading and after unloading aggregates $2.57, while the transfer service of the loaded cars and empty cars before loading and after unloading, aggregates $3.33. Similarly, for 2-line switching service a cost is shown on page 39 of the same exhibit of total classification of loaded and empty cars of $2.98, while the total transfer movement is $3.58. Similarly, on 3-or-more-line hauls, as appears from page 40 of the same exhibit, the total classification service of the loaded and empty car is $3.32, while the total transfer service is $3.93 per car.

This showing clearly indicates that the transfer of the car, which is the particular element of cost responding to differences in distance, exceeds the cost of the classification of the empty car prior to loading, of the loaded car, and of the empty car after unloading. These excess costs of

transfer over classification are shown for both state and interstate combined. There is no showing in the record separating the one from the other.

On pages 131 and 132 of our opening brief we quote from the *First* and *Second Reports* of the Commission to show that the Commission itself in this very proceeding and at four distinct places, treated differences in distance as of controlling importance, except in the one instance of comparing the average intrastate with the average interstate haul.

In their brief in this proceeding (u.37) counsel for the United States and the Interstate Commerce Commission suggest that a difference in average hauls as between two switching districts renders a rate comparison valueless.

Likewise, the difference in average hauls as between intrastate and interstate traffic sufficiently differentiated the service as to justify the application of different rates thereon. As this Court said in *Interstate Commerce Commission* v. *B. & O. R. R. Co.* 145 U. S., 253:

> "Any fact which produces an inequality of conditions and change of circumstances justifies an inequality of charge."

See, in this connection, the dissenting opinion of Chairman Farrell and Commissioner Aitchison (R. 167).

UNJUST DISCRIMINATION DOES NOT OBTAIN EXCEPT WHERE THE CARRIER WHICH MAINTAINS THE RATES ALLEGED TO OCCASION THE UNJUST DISCRIMINATION IS LIKEWISE RESPONSIBLE FOR THE RATES APPLIED TO THE TRAFFIC WHICH IS UNJUSTLY DISCRIMINATED AGAINST.

In *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S., 627, this Court held that in order to constitute discrimination within the purview of section 3 of the Act, there must be a common control and responsibility for both the prejudicial and preferential rates. Appellees argue (u.61-2) that the principle is not applicable here on the ground that

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the carriers are only nominal defendants and that the real source of responsibility for the preference and discrimination is in the state authorities.

Even though the intrastate rates were held in effect by orders of the State Commissions, the order complained of herein is directed to the carriers individually in so far as they may participate in the traffic involved. No matter what may have been the cause of the difference between the state and interstate rates, there is no room for a finding of unjust discrimination unless the carrier which maintains the charge alleged to occasion discrimination also maintains the charge on the traffic which it is alleged is discriminated against. The fact that the carriers are willing to respond to a section 13 order does not give it any greater validity than it would have if the carriers were opposed to it. The Commission can exercise only the powers conferred by Congress and those powers can not be enlarged by agreement of some of the parties before it.

If in this case the Chicago & North Western Railway were resisting the order as applied to its 1-line hauls, this Court, following the *Texas & Pacific Case*, would have to hold that the Commission had exceeded its power on the ground that the Chicago & North Western can not discriminate against traffic which it does not handle and upon which are maintained rates which the Chicago & North Western does not control. Only in this respect does the order of the Commission authorize the Chicago & North Western to increase its 1-line intrastate rates, because the direction to the carriers is only to establish the same rate intrastate as it contemporaneously maintains interstate. In order to increase its 1-line intrastate rate it must have a contemporaneous 1-line interstate rate. This it does not have, and therefore there was no authorization to increase the 1-line intrastate rate of any of the 20 lines which have no interstate rate 1-line and perform no interstate service 1-line.

THE ORDER OF THE COMMISSION IS VOID BECAUSE IT IS INDEFINITE AND LACKS PRECISION IN RESPECT TO THE CARRIERS SUBJECT TO ITS TERMS.

In dealing with the above point the carrier appellees contend (c.58-62) that the Commission is not required to state definitely which carriers are subject to the terms of the Commission's order, relying on *Wisconsin Railroad Commission* v. *C. B. & Q. R. R. Co.*, 257 U. S., 563.

While it may be true that it is not necessary for the Commission to deal with each individual instance of discrimination when proceeding under section 13-(4) of the Act, the Commission is nevertheless not relieved from the responsibility of specifying the carriers and the traffic against which its order is directed. Counsel for the United States take the view (u.60) that the order is not indefinite but embraces all 1-line rates within the district, including those which are maintained by carriers who do not operate in 1-line service in interstate commerce.

Our own views as to this matter are recited at pages 105 to 107 of our original brief. In our judgment the order by its very terms does not apply to the 1-line rates of the North Western because that carrier, within the terms of the order, is not contemporaneously applying a higher 1-line rate to interstate traffic within the district. Nevertheless, the Chicago & North Western has relied on the order so as to escape the findings of the Illinois Commerce Commission which, if observed, would have required it to maintain its former 1-line rates.

If counsel for the United States are correct in their position, and the order does apply to the Chicago & North Western Railway, we then assert that it is invalid on the authority of the *Texas & Pacific Case* above cited.

NOTHING IS SAID BY APPELLEES WHICH RELIEVES THE COMMISSION FROM THE CHARGE OF HAVING DENIED APPELLANTS A FULL AND FAIR HEARING.

We have asserted (Br. pp. 72-82) that there is no evidence in this record as to the cost of switching intra-terminal traffic for a period subsequent to 1927; that in the six or seven years which have elapsed since that time there has been a substantial change in conditions which affect costs; that appellants petitioned the Commission for a further hearing and for an order directing the making of a cost study which would reflect present-day conditions; that the Commission denied such petitions, and that the denial thereof was such an abuse of discretion as to deprive the appellants of the full and fair hearing which is their right under the statute. In reply thereto appellees assert (u.32):

> "It will be noted that the abuse of discretion with which the Commission is charged is not that it denied hearing as to the effect of changed conditions on the reasonableness of rates."

And again (u.35):

> "Appellants' motion was not simply for a reopening to test the reasonableness of the rates in the light of changed conditions but was for the Commission to demand of the carriers a new cost study to be made on all 35 roads and in a particular manner."

It is true that the new study sought was to cover all roads within the district and was to be made for a sufficient length of time and at a time which would be representative. However that may be, the primary necessity for a new cost study and a new hearing based thereon, as appellants viewed it, was in the matter of changed conditions, 1933 as compared with 1926.

Appellants did assert to the Commission in their respective petitions for further hearing that there had been sub-

stantial changes in the conditions affecting the cost of carriage since 1926; that such changed conditions, if reflected in a present-day cost study, would show substantially lower average costs so as to indicate that what may have been reasonable in 1926 was not and could not be reasonable in 1933.

In the *Second Report* the Commission, referring to the appellants, said (R. 140):

> "They stated that the transportation, operating, traffic and competitive conditions have changed, those now obtaining and which will prevail in the future being substantially different from the conditions which existed during the past five years."

In *Missouri-K.-T R. Co.* v. *Kansas City Terminal Ry. Co.*, 198 I. C. C., 4, recently decided, the Commission, at page 8, said:

> "The Interstate Commerce Act carries out the theory that the action of the Commission should be responsive to changing conditions."

The absolute refusal to accord appellants a further hearing in the light of the circumstances in the instant cause is a clear abuse of discretion and renders the order invalid in accordance with the principles enunciated by this Court in *Atchison, T. & S. F. Ry. Co.* v. *United States*, 284 U. S., 248.

Appellees further take the view that the evidence introduced at the second hearing brought the record down to date so as to meet the purposes of appellants' motions and petition. (c.18, 42; u.18, 27, 35-6). The new evidence to which appellees refer is commented upon at pages 97 and 98 of that portion of the *Second Report* dealing with the formal complaint (R. 145-6) and is as follows:

The total operating expenses for all traffic of the eight switching carriers included within the cost study increased from $3.86 per car in 1928 to $4.04 per car in 1931. For the

same period for the same carriers the operating ratio *for all traffic* increased from 66.97 to 74.11 per cent. For the same switching carriers and including the Chicago River & Indiana Railroad, which was not included within the original cost study, there was a decrease over the same period in operating revenues of $10,500,000 and in operating expenses of $5,500,000. As the Commission states it, the carriers contended that there had been a decrease in tonnage which had resulted in increasing unit costs.

At the outset it should be noted that the Commission made no finding whatsoever on the basis of the evidence just summarized. In other words, there is no statement by the Commission in any portion of the *Second Report* that the costs either with respect to all traffic or with respect to the traffic immediately under consideration, i. e., the traffic switched locally within the Chicago switching district, that the costs were higher in 1931 or in 1933 than they had been in previous years.

When it is appreciated that the evidence referred to involved *all traffic* handled by the carriers, of which intra-terminal switching is a very minor portion (about 5 per cent the Commission states (R. 50)), it should be obvious that this evidence afforded no basis for a finding as to costs upon the traffic immediately under consideration.

As a matter of fact, if the more recent data referred to did bear upon the traffic involved in this proceeding, it would constitute a plain showing that the switching rates prescribed far exceed maximum reasonable rates. This is so because the very lowest switching rate prescribed is 3 cents per hundred pounds, minimum 60,000 pounds per car, which provides minimum revenue per car of $18.00. Such revenue is more than four times the average costs per car for all traffic handled by the eight switching carriers mentioned and such costs obviously can not serve to support the Commission's findings as to reasonableness either as of 1926 or as of 1933.

What is necessary in this case, if the appellants are to be given the full and fair hearing which is their right under the statute, is a cost study based on present-day conditions and confined to the intra-terminal switching traffic, separately stated for intrastate and interstate traffic with contemporaneous revenue studies. This matter of the time at which the cost study is to be made is of controlling importance regardless of details of the study or the carriers which make it.

The insistence of the Commission in its brief in resting every finding which it has made in this proceeding upon a cost study which is seven years old, and denominated by it as insufficient standing alone (R. 69), is in line with its refusal to require the carriers to make a cost study which will reflect present-day conditions; this confirms our showing of a clear abuse of discretion.

It should be noted that this case is not like *Georgia Public Service Commission, et al.* v. *United States*, 283 U. S., 765, 770, cited on page 45 of the brief for railroad appellees. In that case this Court said:

> "But the reasonableness of the interstate rates had already been found when they were established in the earlier stage of the proceedings; and at those hearings the Georgia Commission and the Highway Board were represented. *Nearly 18 months had elapsed since the original order, but no evidence was offered at the supplemental hearing to show that conditions had so changed since the interstate rates were prescribed as to require reconsideration of the issue.* The appellants' objection to the procedure is unfounded." (Italics ours.)

How different is the situation in the instant case. Two years had elapsed since the original order, but the original order was based upon evidence which at the time of the Commission's *Second Report* was approximately six years old, applied against a traffic test seven years old. Before the Commission began to take testimony in the 13th section

case, *formal motions* were made pointing out the defects in the original cost study and particularly emphasizing its *ancient character*. These motions were denied prior to the hearing and when the request for cost study reflecting the then conditions was presented during the hearings in the 13th section case, they were all denied. (Br. 74.)

Under the circumstances disclosed in this case it is clear that the decision of this Court in the *Georgia Public Service Commission Case, supra,* not only is no authority for the contention made by the railroad appellees, but is complete affirmation of the righteousness of our contention that the Commission was required to reconsider the question as to the measure of the interstate rate for application as a yardstick in determining what order should be made, if any, under section 13-(4).

Grain Switching Rates

Section VII of our original brief deals with the grain switching rates. We there stated (p. 142) that the order of the Commission holding that the intra-state rates on grain switching constitute unjust discrimination against interstate commerce is void for the following reasons:

(A) It is based on its former order of July 31, 1931, which was void because there was no substantial evidence in the record to support a finding justifying any increases in the then existing interstate grain switching rates;

(B) It was based upon a misconception of the issues involved with respect to the grain switching rates and a misinterpretation of the powers delegated to it by the Interstate Commerce Act and was in direct violation of Section 15 (7) of the Interstate Commerce Act.

The brief filed on behalf of the United States and the Interstate Commerce Commission does not attempt to reply to either of the propositions which we contended for in our original brief, and the brief filed on behalf of the carrier appellees under Section VIII while not attempting

to directly answer the legal propositions urged by the Appellants, asserts that:

> "Under the facts, circumstances and the law applicable to this case, the Commission in its findings and order was not required to accord any different treatment to grain than to any other commodity." (c.70).

In our original brief we stated (p. 149) that:

> "The case was tried by the railroads upon the theory that all that was required of them was to prove what should be a general basis of rates throughout the Chicago Switching District; and if any individual road had commodities which it desired to be excepted from the general basis it was incumbent upon that individual road to show that such excepted commodity should be treated differently from the general basis."

Apparently the carriers still adhere to this theory, because nowhere in their brief do they make any claim that they have sustained the burden cast upon them by Section 15 (7) of the Interstate Commerce Act to justify increases in the grain switching rates, nor do they point to any evidence in the record to rebut the prima facie reasonableness of the grain switching rates (as they existed prior to the Commission's order of July 31, 1931) occasioned by the fact that they had been voluntarily established by the carriers and had been continued in effect over a long period of years.

In their opening paragraph (c.70) in discussing the grain situation, counsel for the carriers states:

> "The record shows that when the uniform all-commodity basis of rates was established for the first time in the Chicago switching district in 1911, grain was one of the commodities *omitted* from the agreement." (Italics ours.)

The choice of the verb "omit," which was also used in the statement of the case (c.20) carries the inference, although

perhaps unintentional, that grain was left out of the all-commodity basis because no particular attention was given to it at that time. In the abridged Webster's Dictionary the word "omit" is defined as follows: "To leave out; neglect; fail to mention."

As a matter of fact, grain was not neglected nor overlooked in the Lowrey Agreement, but from an examination of the agreement itself, which is introduced in evidence in this case, as Haynes' Exhibit 14, there appears a note on page 3 of the agreement as follows:

> "The foregoing industrial switching charges do not apply to grain, coal and coke. There is to be no change in the rates for switching on grain."

Here was a definite, affirmative statement with respect to the grain switching rates.

The second paragraph of the carrier appellees' brief under Section VIII, (c.71), states:

> "The record shows that the movement of grain between points within the Chicago switching district whether it be state or interstate, is the same as the movement of any other traffic within the district; that such movement has no connection, or is not related to the line-haul movement, but such movement is a merchandising, rather than a transportation problem."

It is a singular thing that this broad positive statement is not supported by any references to any page or pages of the record. The identical words were used in the carrier appellees' statement (c.20) and likewise no record citation is there made. It is true that both in the statement and in the argument (pp. 20 and 71) counsel refer to pages 692-695 of the first report of the Commission. (R. 56-59.) The pages of the Commission's report cited definitely do not substantiate the statement of the carriers above excerpted, and as a matter of fact the Commission's report is directly to the contrary.

The Commission's first report (R. 56) finds that the traffic analysis shows no movement of any grain within the Indiana section of the district. This is an important distinction. Moreover, as the Commission finds, the principal grain movement in September, 1926, consisted of corn in 2-line hauls, both interstate and intrastate in Illinois, although there is a substantial intradistrict movement of all grains in one, two and three-line hauls.

By reference to Exhibit 11-A it will be found that in September, 1926, the movement of all grain was:

	Interstate	Illinois Intrastate	Total
1-line	40	189	229
2-line	501	1,508	2,009
3-line	8	150	158
	549	1,847	2,396

The foregoing table shows that the grain movement in two-line hauls greatly exceeds the one-line or three-line hauls, while in the case of commodities generally the one-line hauls exceed the two-line hauls. (R. 43.)

With reference to the statement that the movement of grain between points within the Chicago switching district has no connection and is not related to the line-haul movement, but is a merchandising rather than a transportation problem, there is no foundation in the record for the statement. It is true that the Commission refers (R. 58) to the elimination of the intradistrict charge as a merchandising rather than a transportation problem. This recital is a mere conclusion of the Commission without any record support.

The Commission itself recognized that the record was without data as to the present two- and three-line grain rates from industry to industry upon which to base a conception as to the significance of the proposed change in rates on grain to the all-commodity basis, except what

might be gathered from the statement of revenues on the present and proposed all commodity basis (R. 56, 57), which is another way of saying that the record furnishes no basis, because a mere statement of what the revenue is on a given rate and what it would be on some other rate affords no basis as to what the rate ought to be.

An examination of the Commission's first report (R. 56-59) cited by appellees does not disclose any statement that even indirectly supports the statement of the carriers that the movement of grain between points within the Chicago switching district, whether it be state or interstate, is the same as the movement of any other traffic within the district. If the record had contained any such statement the attention of this court would have been called to it by the carrier's counsel. No such statement appeared in the record, so none could be cited. The fact that grain was excluded from the Lowrey all-commodity basis by affirmative action, and the further fact that grain has been carried as an exception to the all-commodity basis for approximately twenty years, is a clear indication that the movement of grain within the Chicago switching district differs from the movement of other traffic within the district, otherwise a special status would not have been accorded to it.

In the second paragraph on page 71 of the carriers' brief, as well as in the statement (c. 20, 21) the following statement appears:

> "Exhibit 7-A shows that 435 (432) cars moved in interstate transportation, within the district, on a two-line haul; that the average cost per car was $17.03; that the average revenue per car received by the carriers for such transportation was $10.68. That 1,130 (1,149) cars moved in two-line hauls, intrastate, within the district, in Illinois; that the average cost per car was $14.16 ($14.35); the average revenue was $10.23 ($10.47). That 31 (149) cars moved in one-line hauls, intrastate within the district, within Illinois; the average cost was $26.98 ($15.78) per car; the average revenue was $6.30 ($8.59) per car."

We have inserted in parenthesis certain corrections which are taken from pages 1 to 12 inclusive of Exhibit 7-A. The corrections which we have made in the carriers' statement are quite enlightening, because they show that instead of 31 cars moving in one-line hauls intra-state within Illinois, there were 149 cars, and the average cost on the intrastate movement of those 149 cars was $15.78 per car instead of $26.98, as set forth in the carriers' brief. Furthermore, the exhibit shows that the 31 cars referred to were handled in interstate traffic and not in intrastate traffic, and that the interstate cost was $26.98. The corrected statement also shows that whereas the average revenue on the 31 cars of corn interstate was $6.30 per car, the average revenue on the 149 cars of grain intrastate was $8.59, or practically one-third more than the revenue on the interstate cars. The importance of this correction is apparent, because the exhibit demonstrates the contention made in our original brief that the interstate costs were not the same as the intrastate costs and Exhibit 7-A proves this fact. The costs as shown by the carriers with reference to Exhibit 7-A are mere theoretical costs, and are subject to the criticisms which we made of the cost study in our original brief.

In the concluding paragraph of the carrier Appellees' brief, Section VII, (c. 72) it is stated:

> "The report of the Commission shows that careful consideration was given to the contention of the grain interests and upon the facts the Commission did not find any justification for continuing these exceptions in regard to grain, and therefore made no exceptions in this respect; but from the facts of record, as above pointed out, the Commission's order is a valid and lawful order."

Here again the carriers hark back to their mistaken theory of this case that the issue was whether or not grain should be included in an all-commodity basis. We again assert,

as we did in our original brief, that this was not the issue presented for determination, and we again affirm that the grain switching rates published by the individual carriers were "rates, fares or charges" within the meaning of Section 15 (7) of the Interstate Commerce Act, and that the carriers were legally compelled to assume the burden of proof of justifying any increases in the grain switching rates. This subject has been fully dealt with in our original brief, pages 148-156.

Conclusion

In our opening brief we sought to give this Court a complete picture of the case and to particularize and define the precise respects in which the order sought to be enjoined fails to meet the statutory requirements. In many respects appellees have failed to join issue with us, primarily, as we think, because of their inability to explain and excuse the errors committed by the Commission. They have preferred to present a mass of generalities, thus seeking to hide, by the gloss of their presentation, the lack of merit in their case.

For the reasons set forth in detail in our opening brief, we respectfully suggest that the order complained of is void and must be enjoined. The decree appealed from

should be reversed with directions to grant the relief prayed for.

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April 30, 1934.

Office Supreme Court, U. S.
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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1933

No. 787

ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION (OF INDIANA), BOARD OF TRADE CITY OF CHICAGO, AND ACME STEEL COMPANY,

Appellants,

vs.

UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION, THE ALTON RAILROAD COMPANY, et al.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE ALTON RAILROAD COMPANY AND OTHER CARRIERS, APPELLEES

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Chicago, Illinois
April 23, 1934.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1933

No. 787.

ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION (OF INDIANA), BOARD OF TRADE CITY OF CHICAGO, AND ACME STEEL COMPANY,

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vs.

UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION, THE ALTON RAILROAD COMPANY, et al.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE ALTON RAILROAD COMPANY AND OTHER CARRIERS, APPELLEES

OPINIONS.

The decision of the specially-constituted District Court (R. 1306), *Illinois Commerce Commission, et al.* v. *United States, et al.*, dismissing the bill is not reported but appears at pages 1306-1316 of the record. The reports and orders of the Commission (R. 33 and 137) entitled No. 19610 *Switching Rates in Chicago Switching District* are published in 177 I. C. C. 669 and 195 I. C. C. 89.

STATEMENT.

This is an appeal from a final decree of the court below, denying the prayer in the Bill of Complaint to enjoin, set aside, annul, and suspend the order entered July 3, 1933, by the Commission in said proceeding entitled No. 19610 *Switching Rates in the Chicago Switching District,* wherein the Interstate Commerce Commission, under the provisions of Section 13 of the Interstate Commerce Act, found that the state rates result, and will for the future result, in unjust discrimination against interstate commerce.

The carrier appellees contend and urge that the sole issue in this case is whether the Interstate Commerce Commission, in this proceeding, had sufficient evidence before it under the provisions of Section 13 of the Interstate Commerce Act to justify its finding. If this contention is correct, the issues raised by the appellants as to the reasonableness of the interstate rates fixed by the Commission in this proceeding, the various criticisms of the appellants of the cost study, the assertion that the record upon which the Commission decided the reasonableness of the rates was stale, and numerous other subsidiary and collateral contentions, may be disregarded.

Rates involved.

The rates considered and covered by the Commission's report and order are those applicable to traffic that has its origin and destination within the Chicago switching district. Said rates do not apply in connection with switching of traffic that moves into the district from outside, or in connection with traffic that originates in the district and moves to points outside of the district.

Chicago switching district.

The Chicago switching district lies wholly within joining sections of the States of Illinois and Indiana and is a homogeneous territory comprising over 600 square miles; it is densely populated and is gridironed by a network of railway tracks; it is served by thirty-five steam railroads engaged in interstate commerce. There are more than 5,000 miles of track within the boundary of the Chicago switching district (R. 675). The district is approximately 40 miles in length and from 7 to 15 miles wide. In 1911, the industries with private sidetracks numbered 1,910; this number has since increased to more than 4,500. There is also a large number of small manufacturers and distributors who do not have private sidetracks (R. 534). Exhibits 6 and 15 (R. 458, 535) give a map picture of the district. It is geographically defined in Appendix A of the Commission's report in 177 I. C. C. 669 (R. 76). Such a district is deemed essential to the commercial development of Chicago and to the cities within the Chicago switching district (R. 534-543).

Prior to 1911, there was no definite boundary of the Chicago switching district; each carrier serving the district published individual switching rates; there were no joint rates for movement from an industry on one railroad to an industry on another railroad; individual tariffs were made according to local conditions surrounding that road; it was impracticable for shippers who had traffic to move to ascertain what charges would be made. The situation was described as chaotic (R. 767). The shipping interests were dissatisfied with shipping conditions. Chicago felt that its prestige as a commercial center was severely handicapped by reason of the chaotic condition that existed. As a result, the shippers and carriers had numerous conferences in 1910, the result of which was the publishing of

tariffs (in August, 1911) fixing definite boundaries of the Chicago switching district, and establishing single and joint line rates on an all-commodity basis (R. 768).

History of Proceeding before the Commission.

Prior to May 11, 1927, the all-commodity basis of rates applying within the Chicago switching district was jeopardized by an order of the Interstate Commerce Commission in Docket 15110, *Jones & Laughlin Steel Corporation* v. *B. & O. R. R.*, 96 I. C. C. 682. The effect of the order in the *Jones & Laughlin Steel Corporation* case, if complied with, would have required a departure from the all-commodity basis of rates on iron and steel articles within the Chicago switching district (R. 472).

By an all-commodity basis is meant that the same rate applies to all commodities, irrespective of size, character of commodity, distance it travels, and its value. In substance, is a blanket rate. In the instant case, the 3-cent rate for a single-line movement was prescribed by the Interstate Commerce Commission to apply within the Chicago switching district on all commodities, regardless of the distance they moved and regardless of the character of the commodity.

With a view to preserving the all-commodity basis of rates that had been in effect since 1911, a number of conferences of the shippers within the Chicago switching district, the carriers, and representatives of the Interstate Commerce Commission, were had. As a result of such conferences, a basis of rates on all commodities, including iron and steel articles, within the Chicago switching district, was suggested and the carriers forthwith filed with the Interstate Commerce Commission, the Illinois Commerce Commission, and the Public Service Commission of Indiana, such suggested rates. These rates were suspended

by the respective commissions and as a result, the Interstate Commerce Commission, on May 11, 1927, instituted its Docket 19610 *Switching Rates in the Chicago Switching District,* and promulgated same to all interested parties, including the State of Illinois and the State of Indiana (R. 674). Docket 19610 was an inquiry and investigation by the Commission, upon its own motion, concerning the lawfulness of all rates and charges for the switching within the Chicago switching district, of all carload traffic moving in interstate commerce, and their relation to like rates and charges for switching in intrastate commerce, with a view to prescribing such reasonable, proper, nondiscriminatory, nonprejudicial, and otherwise lawful switching rates for said traffic, as the facts and circumstances appeared to warrant (R. 38).

Thereafter extensive hearings were conducted jointly by the Interstate Commerce Commission, the Illinois Commerce Commission, and the Public Service Commission of Indiana. Throughout the joint hearings before the Interstate Commerce Commission and the two state commissions, the Chicago Shippers' Conference Association, an organization representing all shippers within the Chicago switching district; the Chicago Association of Commerce, an organization to promote and protect the interests of Chicago; and individuals, industries, and shippers, contended for an all-commodity basis of rates to apply within the Chicago switching district, state and interstate alike. At no time throughout the several hearings, or in brief or oral argument, did any party of record take the position that a different rate should apply on state traffic within the district than at the same time applied on interstate traffic. The sole question in controversy was the measure of the rates to apply upon the traffic moving within the Chicago switching district. Preliminary to these cooperative hearings, the carriers were directed and required by

the Interstate Commerce Commission to make a cost study (R. 41).

During the course of the hearings in order to conserve time, to produce a more complete record, to make clear the issues, and to record disputed questions of fact, direction was given to the litigants to form a committee consisting of a representative of the Illinois Commerce Commission, a representative of the Public Service Commission of Indiana, a representative of the shippers, and a representative of the carriers; such committee was appointed. A study was made of all issues involved and the facts relating to such issues, and the work of such committee was promulgated in exhibit form and made a part of the record as Exhibits 83 and 84 (R. 761). All points involved in the cost study were tabulated, and wherever there was a disagreement, each party would set forth his facts and argument in support of his contention. The case was briefed by all interested parties and oral argument was had before the full commission, the Illinois Commerce Commission and the Public Service Commission of Indiana sitting with the Interstate Commerce Commission for the purpose of argument. On July 31, 1931, the Commission issued its report and order (177 I. C. C. 669, R. 33) and the two state commissions, on August 26, 1931, issued their separate reports and orders (R. 255, 343).

In its report and order of July 31, 1931, the Commission found (R. 76):

> "That the rates proposed of 3 cents per 100 pounds for 1-line hauls, 3.5 cents for 2-line hauls, and 4 cents for 3-or-more-line hauls, carload, minimum 60,000 pounds within the Chicago switching district as defined in Appendix A will not be unreasonable for the future for application on all of the commodities switched within the district, except railway equipment on its own wheels."

In the last paragraph on page 711 of its report in 177 I. C. C. 669 (R. 75) the Commission stated:

> "A large percentage of the traffic under consideration is intrastate in character, but the record does not disclose any difference in the conditions surrounding the handling of the interstate and intrastate movements. In the hope that both the Illinois Commerce Commission and the Public Service Commission of Indiana will bring their rates in harmony with the conclusions herein, no specific finding or order with regard to intrastate rates will be entered at this time."

The order of the Commission, of July 31, 1931, was to be effective November 10, 1931. Said date was subsequently changed to December 10, 1931, on which date the rates above quoted became effective on *interstate* traffic within the Chicago switching district. On August 26, 1931, as heretofore stated, the Illinois Commerce Commission and the Public Service Commission of Indiana denied the carriers the right to make effective on *intrastate* traffic, within the Chicago switching district, in Illinois and in Indiana, the rates found reasonable by the Interstate Commerce Commission for interstate application within said district.

On September 10, 1931, the carriers filed with the Interstate Commerce Commission a petition seeking appropriate findings and order authorizing and requiring them to establish and apply the same rates to intrastate traffic, within the Chicago switching district, within Illinois and within Indiana, as were found lawful and reasonable for interstate application within the same district, and to have the rates effective concurrently with the effective date of the interstate rates within the district (R. 139). The Commission denied said petition in so far as making such an order upon the record already made, but did, on November 2, 1931, reopen the proceeding in Docket 19610 for further

hearing with respect to the relation of rates and charges for switching in intrastate commerce to the rates prescribed for like switching in interstate commerce, within the Chicago switching district, and for the purpose of determining whether the adjustment of interstate and intrastate rates and charges was unduly prejudicial to interstate shippers and traffic, and unduly preferential of intrastate shippers and traffic, or unjustly discriminatory against interstate commerce, in violation of Section 13 of the Interstate Commerce Act, with a view to the entry of such order, or orders, as might be necessary to correct such violation, or violations, as might be found to exist (R. 139).

On December 28, 1931, complaint was filed by the Acme Steel Company and fifty-seven other individuals, corporations and associations, with the Interstate Commerce Commission, attacking the lawfulness of the said increased interstate switching rates which became effective on December 10, 1931. Said complaint was docketed as No. 24950. Reopened Docket 19610 and said complaint, Docket 24950, were assigned for hearing at the same time and place, before the same examiners. The two cases were heard separately and briefed separately, but the issues were consolidated in one proposed report (R. 139). At the hearing in reopened Docket 19610 and the hearing in Docket 24950, the Illinois Commerce Commission, the Public Service Commission of Indiana, and the complainants in Docket 24950, protestants in reopened Docket 19610 (appellants here) offered evidence in an endeavor to show that the interstate rates within the Chicago switching district were unreasonable. Evidence was submitted in support of allegations that the cost study was defective, conditions had changed, and there was a diversion of traffic to other forms of transportation (R. 140). Virtually all grounds urged in the Bill of Complaint were presented and

urged before the Commission. Exceptions were filed to the proposed report and the case was orally argued before the Commission. The Commission consolidated the two dockets in one report and on July 3, 1933, issued its report and order (195 I. C. C. 89, R. 137), in which report and order it dismissed the complaint in Docket 24950, and ordered (R. 168a):

> "That respondents herein, according as they participate in the transportation be, and they are hereby, notified and required to cease and desist on or before September 20, 1933, from practicing the unjust discrimination found in said report to exist in relation to interstate and intrastate all-commodity switching rates and charges for transportation in switching service in the Chicago switching district within the States of Illinois and Indiana."

The Commission further ordered (R. 168b):

> "That said respondents according as they participate in the transportation, be, and they are hereby, notified and required to establish on or before September 20, 1933, and thereafter to maintain switching rates and charges on an all-commodity basis for switching service in intrastate commerce in the Chicago switching district within the States of Illinois and Indiana which shall be not less than the rates contemporaneously applied by said carriers to the transportation by them of all commodities in interstate switching service between points in the Chicago switching district in the States of Illinois and Indiana."

On August 15, 1933, the appellants herein filed with the Commission a joint petition for reopening said proceedings in Dockets 19610 and 24950 and asked for further hearing; for setting aside of the order of July 3, 1933; for reargument and/or reconsideration of said report and order of July 3, 1933. Said petition was denied October 4, 1933 (R. 139). The carriers, appellees herein, filed ap-

propriate tariffs establishing the rates authorized by the Interstate Commerce Commission in its order of July 3, 1933, effective November 20, 1933.

Facts of record.

Parties appearing before the Commission in the hearings in Docket 19610, in the hearing in reopened Docket 19610, and in the hearing in Docket 24950, requested an all-commodity basis of rates within the Chicago switching district, for application alike on intrastate and interstate traffic. Not a single interest requested or advocated a different rate on state traffic than at the same time applied on interstate traffic. The contention throughout the hearings in the reopened Docket 19610 and in Docket 24950 was that the interstate rates were too high and should be reduced to a reasonable basis; that when a reasonable basis was established for interstate traffic such basis should also apply on state traffic. (R. 62, 75, 475, 533, 534, 535, 536, 538, 541, 542, 548, 549, 555, 565, 608, 617, 618, 651, 653, 655, 656, 659, 700, 709, 848, 849, 857, 868, 1140, 1219, 1277, 1278.)

State and interstate traffic handled alike.

The evidence before the Commission showed that the services rendered in performing intrastate switching and in performing interstate switching within the district are alike and of the same character; that cars are handled both in state and interstate switching by the same train, by the same crew, through the same yards, and at the same time. The evidence showed that the trains handling the traffic within the Chicago switching district, the manner of assembling and operating the trains, and the manner of handling carload freight, were comparable to the handling of similar freight in road-haul service; that each transfer train handling the shipments from one point in the dis-

trict to another point in the district consisted of an engine and a caboose, the same as for road haul. The air had to be connected and in operation and all of the safety appliances that are required in connection with road haul were required in the handling of switching business within the Chicago switching district. All these services are performed by the carriers whether the traffic is state or interstate (R. 956-965). Appellants admitted that the switching movements within the Chicago switching district are performed in substantially the same manner as road-haul movements and that state and interstate traffic within the district is handled in the same trains and that there is no disinction made between the handling of state and interstate traffic (R. 1002).

Same commodities move in state and interstate commerce.

The evidence of record shows that the same commodities move in state traffic as move in interstate traffic; that industries located within the district on either side of the Illinois-Indiana state line manufacture the same or similar commodities as move between points in the district, and that such industries ship both state and interstate within the district. The record shows that large steel industries, large oil refining companies and other manufacturing companies are located within the district, on both sides of the state line. (Exhibits 11-A, 11-B, 110; R. 75, 866, 1048, 1052, 1053, 1069, 1070, 1082, 1083, 1134, 1135, 1136, 1144.)

History and comparison of rates.

The record shows the history of the rates within the Chicago switching district, their origin and changes. Comparisons of rates with rates in other switching districts throughout the country were made. A number of witnesses gave testimony and filed numerous exhibits com-

paring the rates established by the Interstate Commerce Commission for application within the Chicago switching district with rates for line-haul service, with switching rates, and also with rates established by the Interstate Commerce Commission in other cases. (R. 547, 548, Ex. 18; R. 542, 553, 556, 597, Ex. 39; R. 604, Exs. 43, 44; R. 605, Ex. 45; R. 606, Exs. 46, 47, 48; R. 607, 660, Ex. 56; R. 858, 859, 893, 894, 895, 896, 897, 898, 899, 1053, 1054, 1163, 1164, 1165, 1167, 1168, 1169, 1170, 1228, 1229, 1300, 1301, 1302, 1303.)

Competition.

The evidence of record shows that the Illinois-Indiana state line runs north and south through the Chicago switching district (Exhibits 6 and 15, R. 458, 535). In handling interstate traffic within the Chicago switching district, this state line is crossed. Some of the railroads cannot move traffic from an industry located on the Indiana side of the line to an Indiana destination within the district without operating across the state line in Illinois; likewise, some of the roads cannot move traffic from an industry located on the Illinois side of the line, within the district, to a destination within Illinois, within the district, without crossing the state line. Some of the railroads have a number of assembly yards and interchange tracks that are located nearby the state line, and in some instances overlap the state line (R. 1068). The record further shows that there are many industries located on either side of the state line, within the Chicago switching district, that compete one with the other (R. 1081). The location of some of the industries and the competition referred to by the witnesses will be found at the following pages of the record: (R. 549, 559, 571, 584, Ex. 35; R. 587, 601, 608, 615, 701, 742, Ex. 72; R. 965, 1054, 1057, 1068, 1069, 1070, 1071, 1074, 1075, 1082, 1083, 1135, 1142, 1218, 1230).

Volume of traffic.

The record shows that the number of carloads of traffic handled between points within the Chicago switching district for the month of September, 1926, was 42,666 cars; of this number, 17,194 cars moved in interstate commerce; 22,743 moved in intrastate commerce in Illinois; and 2,729 moved intrastate in Indiana. Of this total traffic, 40.29 per cent was interstate; 53.31 per cent was intrastate Illinois; and 6.40 per cent was intrastate Indiana (R. 43). The record shows that that portion of the State of Indiana lying within the Chicago switching district is but a small portion of the district. Exhibit 6 (a map of the Chicago switching district) shows the district as a whole, that portion of the district that lies within Indiana, and that portion of the district that lies within Illinois (R. 1343). The record shows that while 10.3 per cent of the Chicago switching district lies within Indiana and 89.7 per cent of the area of the district lies within Illinois, yet over 40 per cent of all the traffic that moved interstate within the district had its origin or destination within that portion of the State of Indiana within the district. The record shows (Exhibits 11-11A) the movement of the cars within the district, separated as between single-line, two-line, and three-or-more-line movements. The record further shows (Exhibit 11A, 99A) the commodities that moved in each of the 42,666 cars, the weight and the rates charged, and the revenue collected.

Loss of revenue.

The evidence of record shows that for interstate application the Commission established a rate of 3 cents per 100 pounds for single-line hauls; 3.5 cents for two-line hauls; and 4 cents for three-or-more-line hauls; minimum 60,000 pounds. That by reason of the refusal of the Illi-

nois Commerce Commission and the Public Service Commission of Indiana to permit the carriers to place the rates in Illinois and Indiana, within the district, on the same basis as the interstate rates, a lower basis of rates applied on intrastate shipments within Illinois and within Indiana, within the district, than applied on interstate shipments. These lower rates were 2.5 cents per 100 pounds for one or two-line hauls; 3 cents for three-or-more-line hauls; minimum 60,000 pounds. The record further shows that by reason of the lower state rates within Illinois and within Indiana, in the Chicago switching district, and between the district and Chicago Heights, based on normal tonnage of September, 1926, the carriers would lose, on an annual basis, $2,864,957 (Exhibits 99-A, 100-A) that based on the tonnage of a week in November, 1931, the carriers would lose on an annual basis $1,057,521 (Exhibits 101-A, 102) and based on the tonnage of a week in January, 1932, these carriers would lose $1,043,160 (Exhibits 103-A, 104) (R. 164).

Lower state rates cause interference with or blockading of interstate commerce.

The record shows that because of the lower intrastate rates within the Chicago switching district, shippers were routing their shipments over state routes (Exhibit 110, R. 951-2). The record discloses that the normal and customary routes for such shipments, between points within the Chicago switching district are interstate routes. The record shows that between December 10, 1931, and March 31, 1932, 856 cars moved over intrastate routes, when the normal and customary routes of such cars were interstate routes. The requirements and demands of the shippers to so handle their shipments as to protect the lower state rates, interfered with the normal and customary manner of handling business within the Chicago

switching district and required one of the carriers alone to perform 8½ engine hours per day over and above what would have been required if the shipments were handled over interstate routes within the district (R. 981). The record shows that the switching cost only was materially greater in handling the cars via state routes in order to protect the shipper's request for state movement. The actual switching cost on one of the movements illustrated in Exhibit 110 was as follows: if the car had moved over the natural, ordinary and customary route, it would have moved interstate and the switching cost alone for that movement would have been $10.44, but in order that the shipment might be moved wholly within the State of Illinois, the switching cost alone, over the route actually traversed by the car, in order to take advantage of the lower state rate, was $21.78 (R. 955). The demands of the shippers to route their traffic within the district over state routes were due to the fact that the state rate was .5 cents per 100 pounds lower on one-line hauls, 1 cent lower on two-line hauls, and 1 cent lower on three-or-more-line hauls, minimum 60,000 pounds, than were the interstate rates.

The evidence of record discloses that after the interstate rates became effective, December 10, 1931, there was a diversion of traffic from interstate to state movement. The record shows (R. 162) that for one, two and three-or-more-line hauls within the Chicago switching district, in Illinois, for one week (November 9-15, 1931), prior to the effective date of the interstate rates, the percentage of traffic handled intrastate to the whole was 35.39 per cent; while for one week (January 11-17, 1932) subsequent to the effective date of the interstate rates, this percentage was increased to 38.63 per cent. The corresponding figures for traffic moving in Indiana, within the district, were 7.08 per cent prior to the effective date of the interstate

rates, and 8.12 per cent subsequent to the effective date. The percentage of the interstate traffic shows the reverse: for that period prior to the effective date of the interstate rates, the interstate traffic moving within the district was 57.53 per cent of the whole; subsequent to the date the interstate rates became effective, this percentage dropped to 53.25 per cent. The diversion of traffic from interstate to state was to a greater extent between Chicago Heights and the Chicago switching district. Prior to the effective date of the interstate rates, the intrastate traffic was 52.93 per cent, while after the effective date of the interstate rates, this percentage had increased to 71.38 per cent. The percentage of interstate traffic shows the reverse: for the period prior to December 10, 1931, the interstate percentage was 47.07, while for the period subsequent to December 10, 1931, this percentage had shrunk to 28.62 per cent (R. 162).

Cost study.

The evidence of record shows that by notice of October 25, 1926, the Commission required the carriers to make a cost study covering the movement of traffic within the Chicago switching district (R. 41). This request on the part of the Commission also required that the carriers submit statistics relating to the shortest, longest and average haul, also commodities embraced in the 69 classes provided for in the carriers' annual reports to the Commission. Pursuant to this request, the required statistics were compiled on 42,666 cars that moved in the month of September, 1926. The cost study was based on the Coverston-Saur Formula and the study covers carload movements only. The formula segregates the expenses incurred into three general classes, namely: clerical, switching, and car detention or maintenance. Taxes and return on investment are provided for by the employment

of an estimated ratio, referred to as an operating ratio,* and used as a divisor to expand the determined cost so as to embrace those elements. The study was applied to 15 railroads operating within the Chicago switching district. Seven of the railroads are trunk lines and eight are switching and terminal companies (R. 41). Of the 42,666 cars that moved within the Chicago switching district during the month of September, 1926, 26,166 moved in connection with the 15 study roads, or 61.33 per cent of the total cars handled for the month of September, 1926, were cars studied (R. 42, Ex. 7).

Exhibit 6, a map of the Chicago switching district attached as appendix to this brief shows in red the railroads that were involved in the cost study. This shows the representative character of the roads involved in the cost study.

In order to determine the engine-hour costs, a test period of one week, for each of the study roads, was taken. These periods were during that part of the year 1927 between June and October. The exact periods are shown in Exhibit 7 (R. 459). During the test periods the study roads handled an aggregate of 63,586 cars per day, while for the calendar year 1927, they handled an average of 62,460 cars per day, a difference of about 2 per cent. The cost developed in accordance with the formula, based on the test periods of 1927, was applied to the traffic that moved during the month of September, 1926. The formula used is Exhibit 5 (R. 456). On page 9 of this exhibit, the basic, fundamental principle of the formula following the list of twelve general elements of service, and which are subject to further division into sub-elements, is:

"To ascertain the cost of a given kind of switching service, in any terminal, it is necessary first, to deter-

*Operating ratio is the percentage relation of total operating expenses to total operating revenue.

mine the average cost per car for each of the foregoing elements of service, and second, to know what different elements of service are given to the cars under review."

Out of about 2,000 switching crews working per day in the Chicago switching district, 1,118 engine conductors reported for a seven-day period, and the total number of units of cost so developed was 4,710, of which 2,332 were used to develop 6,510 different combinations of units designated as index numbers (R. 459). The unit costs were applied to a total of 26,166 cars, divided as follows: 11,950 single-line hauls; 11,483 two-line hauls; and 2,733 three-or-more-line-hauls (R. 42, Ex. 7; R. 460).

The record shows that due to the world-wide depression, there had been a substantial decrease in tonnage since the cost study was made and since September 21, 1928, the day that the record in the original hearing in Docket 19610 was closed. The decrease in tonnage resulted in an increase in unit costs due to the fact that units of traffic greatly decreased without any opportunity to reduce operating expenses correspondingly, on account of the irreducible minimum having been reached (R. 145). The evidence shows that the operating expenses per car handled increased from $3.68 in 1928 to $4.04 in 1931 (R. 146). The evidence further shows that the total operating revenues for nine switching carriers, for the year 1931, were approximately $10,500,000 less than for the year 1928; whereas the total operating expenses for the same roads, in 1931, were only $5,500,000 less than in 1928. The record shows that the operating ratio of the eight switching lines included in the cost study had increased from 66.97 per cent in 1928 to 74.11 per cent in 1931 (R. 146).

The record further shows that the decline in the number of cars handled by the seven trunk lines involved in the cost study, for their entire system, serving practically all portions of the United States, from 1928 to 1931, was 32.29 per cent, while the cars handled by the eight switching lines involved in the cost study declined but 28.47 per cent (Exs. 107 and 108). This indicates a less falling-off of traffic in the Chicago switching district due to decline in traffic, than for the country as a whole. The record further shows that a switching cost study made in 1928 in Evansville, Indiana, and brought into review by the Public Service Commission of Indiana, produced a cost of $7.90 per loaded car; a new cost study of the same terminal was made in 1931 and resulted in a cost of $12.17 per loaded car (R. 1171).

The record shows that generally, all parties favored an all-commodity basis and practically all parties were of one accord that one level of rates should apply throughout the district in both interstate and intrastate movements. Switching charges differ from line-haul rates in that they are ordinarily not graded in accordance with either the value of the commodity moved or the distance of the movement. Switching rates partake somewhat of the nature of a postage stamp basis. The average miles of one-line, two-line and three-line hauls, within the district, both state and interstate, necessarily differ because of the fact that the interstate includes the district as a whole while the intrastate is only a portion of the whole.

The record shows that of the twelve or more elements used in determining the cost of switching, the element of distance, as exampled in the transfer service, plays the least important part. The record shows, by computations from Exhibits 90 and 91, that of the four railroads in the Chicago switching district that cross the state line, namely, the Baltimore & Ohio Chicago Terminal Ry.; El-

gin, Joliet & Eastern Ry.; Indiana Harbor Belt Ry.; and the Pennsylvania Railroad—all four of which were used in the cost study—on interstate traffic, the weighted average number of elements of service composing an index number* was 14; similarly, the average number of elements of service composing an index number on Illinois intrastate traffic was 13.7; and on Indiana intrastate movements, the average number of elements of service composing an index number was 12.4. Or, stated in another way, using the interstate elements of service composing an index number as 100 per cent, Illinois intrastate represents 97.9 per cent and Indiana, 88.6 per cent. From Exhibit 6 (copy attached to this brief as an appendix), it will be noted that that area of the district lying within Indiana represents but 10.3 per cent of the total.

Grain.

The record shows that when the uniform all-commodity basis of rates was established for the first time in the Chicago switching district, in 1911, grain was one of the commodities omitted from the agreement. The record shows that the movement of the grain between points within the Chicago switching district, whether it be state or interstate, is the same as the movement of any other traffic within the district; that such movement has no connection, or is not related, to the line-haul movement, but such movement is a merchandising rather than a transportation problem. The Commission, in its original report, 177 I. C. C. 669, at pages 692 to 695, discusses the situation relative to grain (R. 56 to 59). Exhibit 7-A shows that 435 cars moved in interstate transportation, within the

*All cars moving over a certain route normally receive the same elements of service peculiar to that route. The total cost per car of all elements of service embraced in a given route are combined under an index number. Or, stated in another way, all different services rendered in furnishing transportation from one industry to another, within the district, are combined under one index number for each railroad.

district, on a two-line haul; that the average cost per car was $17.03; that the average revenue per car received by the carriers for such transportation was $10.68. That 1,130 cars moved in two-line hauls, intrastate, within the district, in Illinois; that the average cost per car was $14.16; the average revenue was $10.23. That 31 cars moved in one-line hauls, intrastate, within the district, within Illinois; the average cost was $26.98 per car; the average revenue was $6.30 per car.

Trucking.

The evidence of record shows that the carriers operating in the Chicago switching district have contracts with various trucking companies in the City of Chicago (R. 1185). That the prices these carriers have to pay truckers are materially higher than the rates prescribed by the Commission for rail transportation. The charges made by these truckers range from 6 cents to 15 cents per 100 pounds, minimum 6,000 pounds—these charges do not include loading or unloading of the truck. The truck rates vary with distance. The record also discloses that the cost for trucking an average load of 6.4 tons was $1.56 per ton as compared with the interstate rates within the district of 60 cents, 70 cents and 80 cents per ton for one, two and three-or-more-line hauls respectively (R. 1194-1197). The evidence of record further shows that the commodities now moving by truck are commodities that moved by truck before the interstate rates were increased, December 10, 1931 (R. 647, 707). The evidence shows these movements by truck were principally confined to heavy-loading commodities, such as crushed stone and brick. The movements were further confined to transportation from central yards to the job where the material was to be used; such places were not located conveniently to any railroad track (R. 144). A witness

for complainants in Docket 24950 testified in regard to their trucking charge for handling brick, and testified that the charge was $1.95 per ton for a haul of 16 miles (R. 1299). The trucking for this company formerly was done by contract, but because of the falling off of business, the contractors abrogated the contract and the brick company had to assume the trucking at the figures before stated (R. 1283).

SUMMARY OF ARGUMENT.

I.

The sole issue before the court is whether the order of the Commission of July 3, 1933, directing the removal of the discrimination created by the state rates against interstate commerce, under Section 13 of the Act, is supported by proper findings based upon substantial evidence.

The validity of the Commission's order of July 31, 1931, establishing the reasonableness of the interstate switching rates within the Chicago switching district is not an issue in this case. The order of the Commission of July 3, 1933, dismissing the formal complaint and finding that the interstate rates for switching within the Chicago switching district were not unjust or unreasonable is a negative order and will not be reviewed by this court. *Procter & Gamble Co.* v. *United States,* 225 U. S. 282.

II.

The order of the Commission is a valid exercise of the authority conferred by Section 13, paragraphs (3) and (4), of the Interstate Commerce Act, because it requires the removal of unjust discrimination against interstate commerce growing out of revenue losses caused by substantial disparity between state and interstate rates, which disparity operates as a real discrimination against and obstruction to interstate commerce.

Predicated upon specific findings by the Commission of revenue losses resulting from a substantial disparity between state and interstate rates—which disparity oper-

ates as a real discrimination against and obstruction to interstate commerce—and requiring increases in the state rates to remove an undue burden upon the revenues of the interstate carriers, it is clearly an order of the character authorized by Section 13 (4); that the Act confers authority to issue such order was settled by this court in *Wisconsin Railroad Commission* v. *C. B. & Q. R. R. Co.*, 257 U. S. 563, and reiterated in the case of *Florida* v. *United States*, 282 U. S. 194, 215, in which case the court upheld the authority "to end an unjust discrimination as against interstate commerce either as between persons and localities, or because of an undue burden upon the revenues of the carrier." Since the latter decision, this court has sustained Section 13 orders in *Georgia Public Service Commission* v. *United States*, 283 U. S. 765; *Alabama* v. *United States*, 283 U. S. 776; *Louisiana Public Service Commission* v. *Texas & New Orleans Railroad Co.*, 284 U. S. 125; *United States* v. *State of Louisiana*, 290 U. S. 70; *Montana* v. *United States*, 290 U. S. decided November 13, 1933; *State of Florida* v. *United States*, decided April 2, 1934. In the last three cases the Commission's orders, like this one, required increases in intrastate rates solely because of unjust revenue discrimination. On account of the frequent references in appellants' brief to Section 3 of the Act, it should be borne in mind that this proceeding is not based upon Section 3, but solely upon Section 13 of the Act, and that the principles involved in Section 3 proceedings are totally different from those covered by actions under Section 13.

III.

The decision and order of the Commission do not contravene the provisions of the Emergency Railroad Transportation Act 1933.

The Emergency Railroad Transportation Act 1933 (c. 91, 48 Stat. 211, approved June 16, 1933), enacted before the order in question was issued, does not adversely affect the validity of the order. The Act seeks "to relieve the existing national emergency in relation to interstate railroad transportation," and amends three sections of the Interstate Commerce Act, including Section 15a, by repealing the Recapture Clause and restating the rule of rate making; but it does not strike down or alter the Commission's authority under Section 13 to remove unjust discrimination against interstate commerce growing out of revenue losses caused by substantial disparity between state and interstate rates which disparity operates as a real discrimination against and obstruction to interstate commerce, and does not rescind or alter the dovetail relation between the provisions of Section 13 and Section 15a. On the contrary, the relationship between the two sections is maintained and the amended Section 15a reenacts the purpose of Congress to provide and maintain "adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service." *State of Florida, et al.* v. *United States*, decided April 2, 1934.

IV.

The order of the Commission is valid because it was entered only after full hearing as required by the law and is based upon specific findings supported by substantial evidence in numerous hearings in which all of the parties in interest were afforded ample opportunity to be heard.

The transcript of evidence taken before the Commission at the various hearings consisted of more than 3,500 pages of evidence; and 134 exhibits consisting of over 2,000 pages. Many days were consumed in taking evidence. Further, the record shows that all of the controversial questions involved in the cost study were analyzed by a committee consisting of a member each of the two state commissions, the shippers and the carriers. This committee had numerous meetings and analyzed, discussed and placed in exhibit form, 128 controversial questions of fact (R. 938), which ultimately were decided by the Commission. The Commission reached its conclusions after full hearing, and its findings are supported by evidence. The order of July 3, 1933 (R. 168a, 168b) is a valid order. *Manufacturers Ry. Co.* v. *United States,* 246 U. S. 457.

The courts confine themselves to determining whether the Commission had misinterpreted the statute under which it operates, has violated constitutional rights, or has acted arbitrarily. The court considers the power to make the order and not its wisdom or expediency, and will not substitute its judgment for that of the Commission, nor will the court review the Commission's conclusions of fact by passing upon the credibility of the witnesses, or conflicts in testimony. *Interstate Commerce Commission* v. *U. P. R. R.,* 222 U. S. 541, 547; *Interstate Commerce Commission* v. *Illinois Central R. R.,* 215 U. S. 452, 457; *Skinner &*

Eddy Corp. v. *United States*, 249 U. S. 557, 562; *Assigned Car Cases*, 274 U. S. 564, 580.

In the latter case, at pages 580 and 581, the court said:

> "It is not for courts to weigh the evidence introduced before the Commission, *Western Papermakers' Chemical Co.* v. *United States*, 271 U. S. 268, 271; or to enquire into the soundness of the reasoning by which its conclusions are reached, *Interstate Commerce Commission* v. *Illinois Central R. R. Co.*, 215 U. S. 452, 471; *Skinner & Eddy Corp.* v. *U. S.*, 249 U. S. 557, 562; or to question the wisdom of regulations which it prescribes. *United States* v. *New River Co.*, 265 U. S. 533, 542. These are matters left by Congress to the administrative 'tribunal appointed by law and informed by experience.' *Illinois Central R. R. Co.* v. *Interstate Commerce Commission*, 206 U. S. 441, 454."

In *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, this court, at page 482, said:

> "The conclusions were reached after full hearing, are not without support in the evidence, and we are unable to say that they show an abuse of discretion. It may be conceded that the evidence would have warranted a different finding; indeed the first report of the Commission was to the contrary; but to annul the Commission's order on this ground would be to substitute the judgment of a court for the judgment of the Commission upon a matter purely administrative, and this cannot be done. *United States* v. *Louisville & Nashville R. R. Co.*, 235 U. S. 314, 320; *Pennsylvania Co.* v. *United States*, 236 U. S. 351, 361."

Section 16a of the Interstate Commerce Act (U. S. Code, Title 49, Sec. 16a) authorizes the Commission after a decision, order or requirement has been made at any proceeding before it to grant a rehearing upon application by any party "if sufficient reason therefor be made to appear." The Statute further provides that applications for rehear-

ing shall be governed by such general rules as the Commission may establish. Rehearings are granted by the Commission at its discretion if sufficient reason therefor be made to appear.

Unless there is an arbitrary action amounting to a gross abuse of such discretion, the conclusion of the Commission is not subject to review by the courts. Appellants in alleging abuse must show by facts that a rehearing or further consideration asked by them was a matter of right rather than a matter of address to the discretion of the Commission, and that the Commission had no power or authority to deny the petition. The leading case on this subject is *A. T. & S. F. Ry. Co.* v. *United States,* 284 U. S. 248, generally referred to as the *Grain Case.* The rule applied by the court was based upon an unusual situation and does not apply to every case in which a dissatisfied litigant before the Commission requests a rehearing. *United States* v. *Northern Pacific Railway,* 288 U. S. 490.

The outstanding facts in the *Grain Case* are entirely different than the facts in the instant case, as will be pointed out in the argument on this point. The order fixing the reasonableness of the interstate rates and the level thereof is not before the court.

V.

The order of the Commission is valid because it is based on findings of ultimate fact amply supported by evidentiary facts.

(a). The Commission is not required to find that the increased interstate rates would be or are reasonable, per se, where the complaint is based on a violation of Section 13 (4) of the Interstate Commerce Act, and the facts of record show that the interstate rates had but recently been established as reasonable by order of the Interstate Commerce Commission.

United States v. *State of Louisiana,* 290 U. S. 70.
Georgia Public Service Commission v. *United States,* 283 U. S. 765.
Florida v. *United States,* 282 U. S. 194.
Florida v. *United States,* No. 342, decided April 2, 1934.

(b) The switching service in the Chicago switching district, both state and interstate, is performed under substantially similar circumstances and conditions.

(c) The Commission found as a fact that an increase in the intrastate rates would provide additional revenue for the carriers.

(d) In a case based on Section 13 (4) of the Interstate Commerce Act the law does not require the Commission to find that the intrastate rates as in effect prior to the order of the Commission were less than maximum reasonable rates.

American Express Co. v. *Caldwell,* 244 U. S. 617.
United States v. *Louisiana,* 290 U. S. 70.
Florida v. *United States,* No. 342, decided April 2,

(e) The Commission found as a fact that the existing intrastate switching rates in the Chicago switching district wholly within the States of Illinois and Indiana discriminated against interstate commerce moving interstate in the Chicago switching district in the States of Illinois and Indiana.

(f) The Interstate Commerce Commission under the law and the facts in this case was not required to separate state and interstate movements, revenues, or expenses of the carriers.

Railroad Commission of Wisconsin v. *C. B. & Q. R. R. Co.*, 257 U. S. 563.

Florida v. *United States*, 282 U. S. 194.

Florida v. *United States*, No. 342, decided April 2, 1934.

(g) The Interstate Commerce Commission has jurisdiction under Section 13 (4) of the Interstate Commerce Act as interpreted by this court to order the removal of a revenue discrimination against the carriers caused by discrepancy between state and interstate rates.

Railroad Commission of Wisconsin v. *C. B. & Q. R. R. Co.*, 257 U. S. 563.

Florida v. *United States*, 282 U. S. 194.

Florida v. *United States*, No. 342, decided April 2, 1934.

Georgia Public Service Commission v. *United States*, 283 U. S. 765.

New York v. *United States*, 257 U. S. 591.

Louisiana Public Service Commission v. *Texas & New Orleans Railroad Co.*, 284 U. S. 125.

United States v. *Louisiana*, 290 U. S. 70.

Alabama v. *United States*, 283 U. S. 776.

VI.

The Commission is not required in a case based upon Section 13 (4) of the Interstate Commerce Act, involving a revenue discrimination, as it is required in a case involving Section 3 of said Act, to state definitely and precisely which carriers are subject to the terms of the Commission's order.

VII.

The order of the Commission is valid because it is based upon findings predicated upon evidence amply sufficient to support such order under Section 13 (4) of the Act.

VIII.

Under the facts, circumstances and the law applicable to this case, the Commission in its findings and order was not required to accord any different treatment to grain than to any other commodity.

IX.

The rates on intrastate and interstate traffic within the Chicago switching district should be the same because there is no real or essential difference between the interstate service and the intrastate service.

X.

The court below in its decision and order did not contravene the requirements of Equity Rule 70½.

ARGUMENT.

I.

The sole issue before the court is whether the order of the Commission of July 3, 1933, directing the removal of the discrimination created by the state rates against interstate commerce, under Section 13 of the Act, is supported by proper findings based upon substantial evidence.

We point out specifically in Parts IV, V, VII and IX of our Argument, the evidence upon which the findings and order of the Commission were based, and show that this evidence was sufficient and substantial. The Commission's order of July 31, 1931 established the reasonableness of the interstate rates within the Chicago switching district. The appellants took no steps to have this order set aside by a court of competent jurisdiction. The appellants did file a formal complaint against the reasonableness of the interstate rates, which was dismissed by the order of the Commission of July 3, 1933. While we contend that that order is not and could not be an issue here, nevertheless if it should be found to be an issue, it will not be reviewed by this court, because it is a negative order. *Procter & Gamble Co.* v. *United States,* 225 U. S. 282.

It is clear that under Section 13, Paragraph (4) of the Interstate Commerce Act, the reasonableness of interstate rates fixed by the Commission is not an issue; the only issue is whether the rates applicable on intrastate commerce discriminate against the interstate commerce which moves under the reasonable interstate rates.

We are confident that an attack upon the reasonableness of the interstate rates will not be permitted in a collateral proceeding when the reasonableness of such rates has been adjudicated in an original proceeding where all of the parties had their day in court and were afforded a full opportunity to be heard. *Georgia Public Service Commission* v. *United States*, 283 U. S. 765.

II.

The order of the Commission is a valid exercise of the authority conferred by Section 13 (3) and (4) of the Interstate Commerce Act, because it requires the removal of unjust discrimination against interstate commerce growing out of the revenue losses caused by substantial disparity between state and interstate rates, which disparity operates as a real discrimination against and obstruction to interstate commerce.

Predicated upon findings of revenue losses resulting from a substantial disparity between state and interstate rates, which disparity operates as a real discrimination against and obstruction to interstate commerce, and requiring increases in those rates in order to remove an undue burden upon the revenues of interstate carriers, the order in question is clearly one of the character authorized by Section 13 (4). In view of the repeated decisions of this court, it is no longer open to dispute that Section 13 of the Interstate Commerce Act forbids two distinct kinds of discrimination, both caused by intrastate rates unduly low in their relation to interstate rates, as a result of which (1) intrastate shippers and localities obtain an undue preference and advantage while competing interstate shippers and localities suffer a corresponding disadvantage and undue prejudice; (2) the carriers engaged in both interstate

and intrastate commerce, which are compelled to carry the intrastate commerce at inadequate rates, are deprived of revenue to which they are justly entitled. As expressed by Chief Justice Taft, in *Railroad Commission of Wisconsin* v. *C. B. & Q. R. R. Co.*, 257 U. S. 563, 587, the words of Section 13 (4) "unjust discrimination against interstate commerce" are not tautological of the preceding words prohibiting undue preference or prejudice as between persons or localities but "aptly include a kind of discrimination against interstate commerce which the operation of the new Act for the first time makes important, and which would seriously obstruct its chief purpose," namely unjust discrimination against interstate commerce because of an undue burden upon the revenues of the carriers.

The court on pages 589 and 590, said:

> "Congress in its control of its interstate commerce system is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonable compensatory return for all the work it does. The States are seeking to use that same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is received for the intrastate business reasonably proportionate to that for the interstate business. *Congress as the dominant controller of interstate commerce may, therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state work.*" (Italics ours.)

All questions concerning the Commission's power and the constitutionality thereof to issue an order solely for the purpose of removing unjust discrimination against interstate commerce were settled by the court's holding in that case, in which the order, though not sustained in its state-wide scope because of discrimination against persons or places alone, was sustained in its entirety as one neces-

sary to remove unjust discrimination against interstate commerce growing out of revenue losses.

The power of Congress to authorize the Interstate Commerce Commission to establish intrastate rates in order to remove an unjust discrimination against interstate commerce is not open to dispute.

Railroad Commission of Wisconsin v. *C. B. & Q. R. R. Co.*, 257 U. S. 563.
Arkansas Railroad Commission v. *C. R. I. & P. Ry. Co.*, 274 U. S. 597.
Alabama v. *United States*, 279 U. S. 229.
Florida v. *United States*, 282 U. S. 194.
Georgia Public Service Commission v. *United States*, 283 U. S. 765.
Alabama v. *United States*, 283 U. S. 776.
Louisiana Public Service Commission v. *Texas & New Orleans Railroad Co.*, 284 U. S. 125.
United States v. *Louisiana*, 290 U. S. 70.
Florida v. *United States*, No. 342, decided April 2, 1934.

III.

The decision and order of the Commission do not contravene the provisions of the Emergency Railroad Transportation Act, 1933.

The Emergency Railroad Transportation Act, 1933 (c. 91, 48 Stat. 211, approved June 16, 1933) passed prior to the issuance of the order of July 3, 1933, here reviewed, does not adversely affect the validity of the order and does not alter the Commission's authority to remove unjust discrimination against interstate commerce growing out of revenue losses caused by substantial disparity between state and interstate rates, which disparity operates as a real discrimination against and obstruction to interstate commerce.

This statute, in Title I, enacts provisions "to relieve the existing national emergency in relation to interstate railroad transportation," and in Title II, enacts amendments to Sections 5, 15a and 19a of the Interstate Commerce Act. Section 15a is amended to read as follows:

> "(1) When used in this section, the term 'rates' means rates, fares and charges, and all classifications, regulations and practices relating thereto.
>
> (2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service."

The amendments to Section 15a by the Emergency Railroad Transportation Act, 1933, did not in any manner affect the powers of the Interstate Commerce Commission under Section 13 and did not strike down the Commission's authority to remove unjust discrimination against interstate commerce, nor did it rescind or alter the dovetail relation between the provisions of Section 13 (4) and the purpose of Section 15a. The decision of this court in the case of the *State of Florida* v. *United States,* No. 342, rendered April 2, 1934, definitely settles this question.

In the above case, the court said:

> "The purpose of the changes in Section 15a is not left in doubt. They were made with the manifest object of eliminating the provisions for the recapture of excess income of carriers and of revising the rule as to rate making. The requirement imposed by Transportation Act, 1920, for the adjustment of rates according to rate groups was abolished and in substitution the Commission was directed to give due consideration to the factors which are specified in the sec-

tion as amended. Thus the Commission is to consider, among other factors, 'the effect of rates on the movement of traffic;' 'the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service;' and 'the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service.'

"Neither the elimination of the group method of rate making, nor the substituted rule, suggests an intention to impair the Commission's authority over intrastate rates for the appropriate protection of interstate commerce. On the contrary, the substituted rule of rate making by its express terms emphasizes the carriers' need of adequate revenues. The Congress had provided authority to meet that need where inadequate intrastate rates caused unjust discrimination against interstate commerce. The Commission had exercised that authority. The Commission had not proposed the diminution of that authority. The new act discloses no intention to weaken national control for essential national purposes over the railway system of the country. It was rather designed to aid that control in the light of the depressed economic condition of the railways. We conclude that the new rule of rate making left the power of the Commission under Section 13 (4) intact."

IV.

The order of the Commission is valid because it was entered only after full hearing as required by the law and is based upon specific findings supported by substantial evidence in numerous hearings in which all of the parties in interest were afforded ample opportunity to be heard.

The transcript of evidence taken before the Commission at the various hearings consisted of more than 3,500 pages of evidence, and 134 exhibits consisting of over 2,000 pages.

Many days were consumed in taking evidence. Further, the record shows that all of the controversial questions involved in the cost study were analyzed by a committee consisting of a member each of the two state commissions, the shippers and the carriers. This committee had numerous meetings and analyzed, discussed and placed in exhibit form, 128 questions of fact (R. 938). The result of the committee's studies was embodied in Exhibits 83 and 84 which were introduced and received as evidence. The Commission reached its conclusions after full hearing and its findings are supported by evidence. The order of July 3, 1933 (R. 168a, 168b) is a valid order. *Manufacturers Railway Company* v. *United States*, 246 U. S. 457.

The court confines itself to determining whether the Commission has misinterpreted the statute under which it operates, has violated constitutional rights, or has acted arbitrarily. The court considers the power to make the order and not its wisdom or expediency, and will not substitute its judgment for that of the Commission, nor will the court review the Commission's conclusions of fact by passing upon the credibility of the witnesses, or conflicts in testimony. *Interstate Commerce Commission* v. *U. P. R. R.*, 222 U. S. 541, 547; *Interstate Commerce Commission* v. *Illinois Central R. R.*, 215 U. S. 452, 457; *Skinner & Eddy Corp.* v. *United States*, 249 U. S. 557, 562; *Assigned Car Cases*, 274 U. S. 564, 580.

In the latter case, at pages 580 and 581, the court said:

> "It is not for courts to weigh the evidence introduced before the Commission, *Western Paper Makers' Chemical Co.* v. *United States*, 271 U. S. 268, 271; or to enquire into the soundness of the reasoning by which its conclusions are reached, *Interstate Commerce Commission* v. *Illinois Central R. R. Co.*, 215 U. S. 452, 471; *Skinner & Eddy Corp.* v. *United States*, 249 U. S. 557, 562; or to question the wisdom of regulations which it prescribes. *United States* v. *New River Co.*, 265

U. S. 533, 542. These are matters left by Congress to the administrative 'tribunal appointed by law and informed by experience.' *Illinois Central R. R. Co.* v. *Interstate Commerce Commission,* 206 U. S. 441, 454."

In *Manufacturers Railway Company* v. *United States,* 246 U. S. 457, the court discusses the law and at page 482, among other things, said:

> "The conclusions were reached after full hearing, are not without support in the evidence, and we are unable to say that they show an abuse of discretion. It may be conceded that the evidence would have warranted a different finding; indeed the first report of the Commission was to the contrary; but to annul the Commission's order on this ground would be to substitute the judgment of a court for the judgment of the Commission upon a matter purely administrative and this cannot be done. *United States* v. *Louisville & Nashville R. R. Co.,* 235 U. S. 314, 320; *Pennsylvania Co.* v. *United States,* 236 U. S. 351, 361."

Section 16a of the Interstate Commerce Act (U. S. Code, Title 49, Sec. 16a) authorizes the Commission after a decision, order or requirement has been made at any proceeding before it, to grant a rehearing upon application by any party "if sufficient reason therefor be made to appear." The Statute further provides that applications for rehearing shall be governed by such general rules as the Commission may establish. Rehearings are granted by the Commission at its discretion if sufficient reason therefor be made to appear.

The granting or denial of a petition for rehearing and reconsideration in the ordinary case is a matter for the sound discretion of the tribunal to which the petition is addressed. Unless there is an arbitrary action amounting to a gross abuse of such discretion, the conclusion of the Commission is not subject to review by the courts. Ap-

pellants in alleging abuse must show by facts that a rehearing or further consideration asked by them was a matter of right rather than a matter of address to the discretion of the Commission, and that the Commission had no power or authority to deny the petition. The leading case on this subject is *Atchison, Topeka & Santa Fe Railway Co.* v. *United States*, 284 U. S. 248, generally referred to as the *Grain Case*. The decision in that case turned upon a single point, namely—that the railroads' petition to the Commission was in the nature of a supplemental bill rather than an ordinary petition for rehearing. The denial of the petition in the *Grain Case* was not within the permitted range of the Commission's discretion but was a denial of right. The rule applied by the court was based upon an unusual situation and does not apply to every case in which a dissatisfied litigant before the Commission requests a rehearing. *United States* v. *Northern Pacific Railway Co.*, 288 U. S. 449.

The facts in the *Grain Case* were entirely different than the facts in the instant case. In the *Grain Case* it was shown that a period of more than two years had elapsed since the record closed, that a severe depression had set in after the record closed, and that the carriers had been deprived of an opportunity to present such facts to the Commission. In the instant case the record shows that the hearing in the original case, 177 I. C. C. 669, was closed in September, 1928. The case was briefed and argued before the full Commission. A decision was rendered July 31, 1931. After the decision, a petition by protestants (appellants here) was filed requesting that the order be set aside and the case reopened for further hearing. This petition was denied by the Commission October 12, 1931 (R. 139).

On November 2, 1931, Docket 19610 was reopened for further hearing with respect to the relation of rates

and charges for switching intrastate commerce to the rates prescribed for like switching by the Commission's order of July 31, 1931. Formal complaint was filed on December 28, 1931, by the Acme Steel Company and others (appellants here) alleging that the interstate rates for switching within the Chicago switching district, effective December 10, 1931, were unreasonable in violation of Section I of the Interstate Commerce Act. This complaint was given Docket 24950. Pending the hearing in the reopened Docket 19610, and the hearing on the reasonableness of the rates in Docket 24950, the protestants and complainants (appellants here) filed petitions, dated January 28, February 3 and February 18, 1932, asking that the carriers be required to make a new and more elaborate cost study. These petitions were denied by the Commission. Hearings were had in May, 1932, on reopened Docket 19610 and Docket 24950. The complainants in Docket 24950 contended that the interstate rates and minimum weights established by authority of the Commission's order of July 31, 1931 were "greater than the traffic will bear and were and are unjust and unreasonable in violation of Section I of the act." (195 I. C. C. 92) (R. 140) The details of the cost study, the formula used in connection therewith, and the criticism of the carriers, the shippers, and the representatives of the Illinois and Indiana State Commissions, are set forth at length in the first report and decision of the Commission (177 I. C. C. 669) (R. 33-84); "Similar criticisms" as were offered at the original hearing "were again advanced at the further hearings." (195 I. C. C. 92) (R. 140) The complainants in Docket 24950 (appellants here) pointed out "that the prior record was closed on September 21, 1928 and contended that the test periods within which the unit costs were determined should have been made on all of the thirty-five switching carriers operating within the District, and for a longer and more recent pe-

riod of time in order to bring the study down to date." (195 I. C. C. 92) (R. 140)

The complaint case and the reopened Docket 19610 were heard separately, but "in order to prevent repetition and to conserve the records it was stipulated that any pertinent or relative testimony in the record in one case should be considered as a part of the record in the other case." (195 I. C. C. 91) (Rec. 139) The case was briefed, a proposed report served, and exceptions to the proposed report were filed by the interested parties, and the case was orally argued before the full Commission. The decision of the Commission was rendered July 3, 1933. On August 15, 1933, the protestants and complainants before the Commission (appellants here) petitioned the Commission to reopen the case for further hearing and asked that the order of July 3, 1933, be set aside. This petition was denied.

The reasonableness of the switching rates established by the Commission's order of July 31, 1931, was the sole issue involved in Docket 24950. The hearings in Docket 24950 and reopened Docket 19610 brought the record down to date with respect to all issues involved including the reasonableness of the interstate switching rates.

The record in the instant case shows that due to the depression, traffic had materially decreased in volume unaccompanied by a proportionate decrease in operating expenses, and that "the decrease in tonnage has resulted in increasing their unit cost due to the fact that units of traffic have greatly decreased, with no opportunity to reduce operating expenses correspondingly on account of the irreducible minimum having been reached;" (195 I. C. C. 97) (R. 145); and that "a decrease in volume of traffic unaccompanied by a proportionate decrease in operating expenses would cause unit costs to increase rather than diminish." (195 I. C. C. 97) (R. 145) The record further

shows "that the total operating expenses per car handled increased from $3.86 in 1928 to $4.04 in 1931." (195 I. C. C. 98) (R. 146)

The record further shows that the total operating revenues of the eight switching roads involved in the cost study and including the Chicago River & Indiana Railroad "for the year 1931 were approximately $10,500,000 less than for the year 1928, whereas, the total operating expenses in 1931 for the same roads were only $5,500,000 less than in 1928." (195 I. C. C. 98) (R. 146)

Appellants cannot be heard to say that the Commission abused its discretion in denying their petition for reargument and reconsideration, or in denying their motions for a new and more elaborate cost study. The order of the Commission of July 31, 1931, establishing the reasonableness of the interstate rates became effective December 10, 1931. No court action to test the validity of the order of July 31, 1931, was brought and that order is not complained of here. The record upon which the reasonableness of the rates was established was brought down to date through the filing of the formal complaint Docket 24950. The complainants cannot be heard to complain that the record is stale, since, through the complaint filed by them and through the reopening of Docket 19610, the record was brought down to date by their additional evidence and the additional evidence of the appellee carriers. There can be no question but that if a new cost study had been developed, it would have shown increased costs and warranted higher rates than those established by the Commission.

V.

The order of the Commission is valid because it is based on findings of ultimate fact amply supported by evidentiary facts.

(a) THE COMMISSION IS NOT REQUIRED TO FIND THAT THE INCREASED RATES WOULD BE OR ARE REASONABLE PER SE, WHERE THE COMPLAINT IS BASED ON A VIOLATION OF SECTION 13 (4) OF THE INTERSTATE COMMERCE ACT AND THE FACTS OF RECORD SHOW THAT THE INTERSTATE RATES HAD BUT RECENTLY BEEN ESTABLISHED AS REASONABLE BY ORDER OF THE INTERSTATE COMMERCE COMMISSION.

The record shows that by the Commission's report and order of July 31, 1931,

> "the rates proposed of 3 cents per 100 pounds for 1-line hauls, 3.5 cents for 2-line hauls, and 4 cents for 3-or-more-line hauls, carload minimum 60,000 pounds, within the Chicago switching district as defined in Appendix A, will not be unreasonable for the future for application on all of the commodities switched within the district, except railway equipment on its own wheels." (177 I. C. C. 712) (R. 76)

This order of the Commission has not been challenged in any court. The record further shows that in the Commission's report and order of July 3, 1933, the Commission found (195 I. C. C. 89, 108) (R. 156):

> "That the assailed interstate switching rates of 3 cents per 100 pounds for 1-line hauls, 3.5 cents for 2-line hauls, and 4 cents for 3-or-more-line hauls, and the carload minimum weight of 60,000 pounds, applicable within the Chicago switching district and between the district and Chicago Heights, Ill., are not unjust or unreasonable."

In the case of *Georgia Public Service Commission, et al.* v. *United States,* 283 U. S. 765, at page 770, this court said:

> "It is true that when state rates are assailed on the ground that they result in undue prejudice to interstate shippers or discriminate against interstate commerce, the Commission must determine whether the existing interstate rates are reasonable, as it may not require intrastate rates to be raised above a reasonable level. *State Corporation Comm.* v. *Aberdeen & Rockfish R. Co.,* 136 I. C. C. 173, 180. But the reasonableness of the interstate rates had already been found when they were established in the earlier stage of the proceedings; and at those hearings the Georgia Commission and the Highway Board were represented. Nearly 18 months had elapsed since the original order, but no evidence was offered at the supplemental hearing to show that conditions had so changed since the interstate rates were prescribed as to require reconsideration of the issue. The appellants' objection to the procedure is unfounded."

In the instant case, the reasonableness of the interstate rates was established by the order of the Commission of July 31, 1931. The appellants were represented at the hearing in which the reasonableness of the interstate rates was established. Furthermore, five months after the order of the Commission establishing the reasonableness of the interstate rates was issued—and but 19 days after the interstate rates became effective—a formal complaint (Docket 24950) was filed, attacking the reasonableness of the interstate rates, and at the supplemental hearing in Docket 19610 and the hearing in formal complaint Docket 24950, the Commission found that the interstate rates "are not unjust or unreasonable." (195 I. C. C. 108) (R. 156) See: *United States* v. *Louisiana,* 290 U. S. 70; *Florida* v. *United States,* 282 U. S. 194; *Florida* v. *United States,* No. 342, decided April 2, 1934.

(b) SWITCHING SERVICE IN THE CHICAGO SWITCHING DISTRICT BOTH STATE AND INTERSTATE IS PERFORMED UNDER SUBSTANTIALLY SIMILAR CIRCUMSTANCES AND CONDITIONS.

The evidence before the Commission shows "that the traffic is handled in the same trains"; (195 I. C. C. 112) (R. 160) that "the business is moved in regular transfer trains consisting of cars for both interstate and intrastate movements, operated under full crews with the air coupled up and supplied with cabooses, and both road haul and switching business is handled in the same trains." (195 I. C. C. 100) (R. 148) The evidence shows that the record did not disclose "any difference in the conditions surrounding the handling of the interstate and intrastate movements." (177 I. C. C. 711) (R. 75) The cars are handled both in state and interstate switching by the same train, by the same crew, through the same yard, and at the same time.

The evidence shows also that the trains handling the traffic within the Chicago Switching District, the manner of assembling and operating the trains, and the manner of handling carload freight, were comparable to the handling of similar freight in road-haul service. All these services are performed by the carriers whether the traffic is state or interstate (R. 956, 965). Appellants admitted that the switching movements within the Chicago Switching District are performed in substantially the same manner as road-haul movements, that state and interstate traffic within the district is handled in the same trains, and that there is no distinction made between the handling of state and interstate traffic (R. 1002).

(c) THE COMMISSION FOUND AS A FACT THAT AN INCREASE IN THE INTRASTATE RATES WOULD PROVIDE ADDITIONAL INCOME FOR THE CARRIERS.

On page 118 of the Commission's report in 195 I. C. C. (R. 166) the Commission made the following finding:

> "While the evidence shows that the existing competition by motor truck is material, and indicates that this means of transportation will be utilized to a greater extent if the intrastate rates are increased, and that, therefore, some additional tonnage in all probability will be lost to trucks, or diverted to barge and pipe-line movement, the record nevertheless is convincing *that the carriers will derive a substantial increase in revenue if the intrastate rates are increased to the interstate basis, and we so find.*" (Italics ours.)

The evidence of record shows that the Commission established for interstate application, a rate of 3 cents per 100 pounds for 1-line hauls; 3.5 cents for 2-line hauls; and 4 cents for 3-or-more-line hauls, minimum 60,000 pounds (177 I. C. C. 712) (R. 76); that by reason of the refusal of the Illinois Commerce Commission and the Public Service Commission of Indiana to permit the carriers to place the rates in Illinois and Indiana, within the district, on the same basis as interstate rates, a lower basis of rates applied on intrastate commerce within Illinois and within Indiana, within the district, than at the same time applied on interstate commerce. These lower rates were 2.5 cents per 100 pounds for 1 or 2-line hauls; 3 cents for 3-or-more-line hauls; minimum 60,000 pounds.

The record shows "a constructive annual loss in revenue resulting from the lower intrastate rates required to be maintained under the orders of the Illinois and Indiana State Commissions. This loss is measured by the differ-

ence between the revenue which would have accrued on the intrastate traffic of September, 1926, under interstate rates as increased December 10, 1931, and the prevailing intrastate rates. The traffic moving in September, 1926, is used as representative because it was the basis for the cost data presented in the original case. The estimated annual difference in revenue within Illinois amounts to $2,683,981, within Indiana, $94,244 and between the Chicago switching district and Chicago Heights $86,732, a total of $2,864,957." This "is the amount by which interstate commerce would be unduly burdened under normal business conditions." (195 I. C. C. 116) (R. 164)

Studies were also introduced in evidence showing the difference in revenue between interstate and intrastate rates based upon traffic moving during the weeks of November 9 to 15, 1931, and January 11 to 17, 1932. These two weeks represented periods prior and subsequent to the increase of interstate rates on December 10, 1931. Based upon intrastate switching traffic moving "within the district for the week of November 9 to 15, there is shown a difference in revenue of $11,731 per week, or an estimated annual loss of $1,011,369; on the basis of the traffic of January 11 to 17 the difference would amount to $9,556 per week, or an estimated annual loss of $985,181." (195 I. C. C. 116) (R. 164) "Based upon traffic which moved intrastate between the district and Chicago Heights for the week of November 9 to 15, the difference in revenue amounted to $535, or an estimated annual loss of $46,152; and for the period January 11 to 17 there is shown a loss of $562, or a net annual loss of $57,979. These constructive differences amount annually to $1,057,521 based upon the traffic handled during the week of November 9 to 15, and to $1,043,160 based upon the traffic moving during the period January 11 to 17." (195 I. C. C. 116) (R. 164)

The record further shows that because of the lower intrastate rates within the Chicago switching district; shippers are routing their shipments so as to have said shipments move over state routes (Ex. 110; R. 952). The record discloses that the normal and customary routes for such shipments between points within the Chicago switching district are interstate routes. The exhibit of record "shows that during the period December 10, 1931, to March 31, 1932, 856 cars were specifically routed and moved over the lower rated intrastate routes which formerly would have moved over interstate routes," (195 I. C. C. 113) (R. 161). Such action in routing the shipments resulted in a loss in revenue of $7,656. The requirements and demands of the intrastate shippers to so handle their shipments as to protect the lower state rates, interfered with the normal and customary manner of handling business within the Chicago switching district and required one of the carriers alone to perform eight and one-half engine hours per day over and above what would be required if the shipments were handled over interstate routes within the district (R. 981).

The record further shows that the switching cost alone was materially greater in handling the car via state routes in order to protect the shipper's request for state movement. If the car (in one of the illustrations in Exhibit 110) had moved over the natural, ordinary and customary route, it would have moved interstate and the switching cost alone for that movement would have been $10.44; but in order that the shipment might be moved wholly within the State of Illinois and thus secure the advantage of the lower state rate, the switching cost alone over the route the car actually moved was $21.78 (R. 955). The demands of the shippers to route their traffic within the district over state routes are due to the fact that the state rate is .5 cents per 100 pounds lower on 1-line hauls, 1 cent

lower on 2-line hauls, and 1 cent lower on 3-or-more-line hauls, minimum 60,000 pounds, than are the interstate rates.

(d) IN A CASE BASED UPON SECTION 13 (4) OF THE INTERSTATE COMMERCE ACT, THE LAW DOES NOT REQUIRE THE COMMISSION TO FIND THAT THE INTRASTATE RATES AS IN EFFECT PRIOR TO THE ORDER OF THE COMMISSION WERE LESS THAN MAXIMUM, REASONABLE RATES.

The interstate rates of 3 cents, 3.5 cents and 4 cents for 1-line, 2-line and 3-or-more-line hauls, respectively, minimum 60,000 pounds, had been prescribed as reasonable rates in its order of July 31, 1931 (177 I. C. C. 669, 712) (R. 76), and found not unjust or unreasonable in its order of July 3, 1933 (195 I. C. C. 89, 108) (R. 156), the order here under review. Therefore the law does not, under such facts, require the Commission to pass upon the reasonableness of intrastate rates that cause unjust discrimination against interstate commerce under Section 13, (4) of the Act.

In the case of *United States* v. *Louisiana*, 290 U. S. 70, this court said:

> "In the Fifteen Per Cent Case, 1931, the Commission, after a careful survey, found itself faced with an acute emergency calling for prompt action to give temporary financial relief to the transportation system. The Commission's report amply discloses that the reasonableness of the rates as generally applied was a controlling consideration in fixing the varying amount of the surcharges and in selecting the particular items to bear them. This is manifested in its conclusion that 'the freight articles selected by us in this connection were those for the transportation of which we believed the rates could be somewhat increased without causing the traffic to be transferred to other agencies of transportation and without bringing about an undue disturbance in business conditions or transgressing the bounds of maximum reasonable rates.' It was neces-

sary, under the circumstances, that the increases take effect without suspension, but this was done subject to the proviso that 'the resulting rates will in all respects be subject to investigation and determination as to the lawfulness of particular rates or schedule of rates, as provided by the Act.' The Commission's action complied with Sec. 15a, see New England Divisions Case (*Akron, C. & Y. R. Co.* v. *United States*) *supra* (261 U. S. 197; 67 L. Ed. 612, 43 S. Ct. 270)."

The finding that discrimination exists and the interstate rates are reasonable does not necessarily imply a finding that the intrastate rates are unreasonable, both rates may lie within the zone of reasonableness and yet involve unjust discrimination. *American Express Co.* v. *Caldwell*, 244 U. S. 617, 624; *Interstate Commerce Commission* v. *Baltimore & Ohio R. R. Co.*, 145 U. S. 263, 277.

The reasonableness of the interstate rates had been found by the Commission; unjust discrimination against interstate commerce had been found by the Commission; the law forbids unjust discrimination against interstate commerce. To remove this unjust discrimination against interstate commerce the state rates were required to be raised. Neither law nor necessity requires the Commission to pass upon each individual intrastate rate, nor upon the intrastate rates as a whole, with respect to reasonableness.

(e) THE COMMISSION FOUND AS A FACT THAT THE EXISTING INTRASTATE SWITCHING RATES IN THE CHICAGO SWITCHING DISTRICT WHOLLY WITHIN THE STATES OF ILLINOIS AND INDIANA, DISCRIMINATED AGAINST INTERSTATE COMMERCE MOVING INTERSTATE IN THE CHICAGO SWITCHING DISTRICT IN THE STATES OF ILLINOIS AND INDIANA.

On page 118 of the Commission's decision (195 I. C. C. 89) (R. 166), the Commission found:

"We further find that the transportation conditions throughout the Chicago Switching District are sub-

stantially similar; that they are not more favorable for intrastate movements than for interstate movements between the switching district and Chicago Heights; * * * that the maintenance of such lower intrastate rates results and will for the future result in unjust discrimination against interstate commerce."

The record shows (R. 162) that all parties agree that switching movements within the district are handled by trains similar to trains in road-haul service and that interstate traffic and intrastate traffic are handled alike in those trains. The record shows "that many of the industries cannot ship to points within the district except over interstate routes and therefore must pay the interstate rates of 3, 3.5 and 4 cents for one, two and three-or-more-line hauls, respectively, while the industries which have intrastate routes available, may ship on the basis of 2.5 cents for 1-line and 2-line hauls, and 3 cents for 3-or-more-line hauls, in carloads minimum 60,000 pounds, and in some instances at lower rates, but usually with higher minima, because of the exceptions under the Lowrey rates applicable on intrastate traffic." (195 I. C. C. 112) (R. 160)

The record further shows that the shippers were taking advantage of the lower state rates and specifically routing their shipments so that the same would move over state routes (R. 161, 951, 952).

The record shows "that during the period December 10, 1931, to March 31, 1932, 856 cars were specifically routed and moved over the lower rated intrastate routes, which formerly would have moved over interstate routes," (195 I. C. C. 113) (R. 161), and by reason of this action on the part of the shippers and the lower state rates the carriers lost in revenue $7,656 (R. 161 and 952).

The record further shows that since the interstate rates were increased on December 10, 1931, the percentage of

intrastate movements within the district and between the district and Chicago Heights has increased (R. 162).

Exhibits of record show "the ratios, in percentages, of the interstate and intrastate traffic for the week of November 9 to 15, 1931, prior to the effective date of the increases, as compared with the week January 11 to 17, 1932, which was subsequent to the time the interstate increases became effective." (195 I. C. C. 114) (R. 162) These exhibits show that for the composite one, two and three line hauls in Illinois, for the November week, the percentage was 35.39 per cent; for the January week, this percentage had increased to 38.63; in Indiana, the November week showed 7.08 per cent, while for the January week it showed 8.12 per cent. The combined intrastate traffic for both Illinois and Indiana showed for the November week, 42.47 per cent, while for the January week, this percentage had increased to 46.75. The interstate traffic shows the reverse. For the November week, it was 57.53 per cent, while for the January week it was 53.25 per cent. With reference to the traffic between the Chicago switching district and Chicago Heights, the November week showed that the intrastate traffic amounted to 52.93 per cent of the total, while for the January week, this percentage had increased to 71.38. On the other hand, the interstate traffic showed that the November week was 47.07 per cent, while for the January week this percentage had decreased to 28.62 (R. 162).

The revenue loss to the carriers by reason of the lower state rates is shown of record (R. 164).

Based upon the traffic moving in September, 1926, the loss to the carriers based upon the difference between the intrastate rates and the interstate rates, on an annual basis, amounts to $2,864,957. Based upon the tonnage that moved between November 9 to 15, 1931, allocated to an annual basis, the revenue loss is $1,057,521. Based upon

the traffic that moved January 11 to 17, 1932, allocated to an annual basis, the loss amounts to $1,043,160.

There can be no question but that the Commission found that the state rates within the Chicago switching district cause discrimination against interstate commerce and that the facts of record amply support such a finding.

(f) THE INTERSTATE COMMERCE COMMISSION, UNDER THE LAW AND THE FACTS OF THIS CASE, WAS NOT REQUIRED TO SEPARATE STATE AND INTERSTATE MOVEMENTS, REVENUES OR EXPENSES OF THE CARRIERS.

The evidence of record shows that the Chicago switching district is "approximately 40 miles in length and from 7 to 15 miles wide, and is densely populated. It covers an area larger than any other switching district in the country, comprising over 600 square miles and is served by 35 railroads, which maintain a network of more than 5,000 miles of track within the boundaries of the district." (177 I. C. C. 675-6) (R. 39, 40) The district is honeycombed by a network of tracks and sidetracks over which the switching under consideration is performed.

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> "embrace all of the 69 commodity groupings into which the traffic has been classified. In each of the groups are involved both interstate and intrastate movements. * * * The interstate rates apply on an all-commodity basis, the same rate and minimum weight applying to each commodity, depending, of course, on the number of lines involved in the movement, but irrespective of differences in the length of haul." (195 I. C. C. 108-9) (R. 156-7)

> "The shippers and receivers of freight within the district generally declared that the basis of rates should be the same throughout the district for interstate and intrastate movements, some contending, however, that the level should not exceed the present

intrastate rates, while others urged that the same level be maintained, provided the all-commodity basis would not exceed 2.5, 3, and 3.5 cents for the one, two and three-or-more-line movements respectively. The evidence discloses that the traffic, both interstate and intrastate, is handled in the same trains, by the same train crews, and in the same manner." (195 I. C. C. 109) (R. 157)

The witness for the Chicago Association of Commerce testified (R. 534-5):

"Unless a uniform basis applies throughout the district, centralization of manufacturers and distributors adjacent to the source of supply will result and cause congestion and increased cost to those sections, with a loss of traffic and depreciation of property values in other sections. Many industries are now at points removed from the congested areas. A forecast of the relocation of industries and loss of investment that would result from subdividing the district is impossible."

The witness for the Chicago Retail Lumber Association testified (R. 709-10):

"The lumber interests favor the all-commodity basis in the Chicago district and are satisfied with the present rates."

The witness for the grain interests testified (R. 700):

"As to zoning, a study of Mr. Haynes' map indicates it is an impossible thing."

The witness for the By-Products Coke Corporation testified (R. 565):

"As far as our own company is concerned, considering our immediate selfish interests alone, I would not object to a zoning system but as to the interests of the entire industrial community any zoning system would certainly be injurious to Chicago and its indus-

tries. What Mr. Haynes has said with reference to maintenance of a uniform system throughout the whole district meets my approval."

The witness for the Consumers Company testified (R. 608):

"Zoning the district would create discrimination, because industries in the same line of business are located on the north side, the west side or the south side, and in many cases right in the loop. The dealers in sand, gravel and stone are all over the district, and a line could not be drawn anywhere without creating discrimination against certain localities and as between certain carriers."

From the above it is apparent that the desire of the litigants was for a uniform rate throughout the district and the Commission, under its administrative power, has the right to determine the nature of the rate to apply to the territory or district under consideration, that is, as to whether the rate should be a mileage rate or a group rate, and whether such rate should apply to all of the commodities or to only certain of the commodities that move within the district under review. And in establishing an all-commodity rate as the switching charge to apply within the district, such charge applies "to any haul within the switching district no matter how long or how short it may be,". Furthermore,

"switching charges are largely based on average conditions. In every switching district there will almost invariably be found some hauls so long and some so difficult that the cost is in excess of the switching charge collected, but that fact does not show the charge to be less than reasonable, for the question is whether the carrier is receiving adequate compensation for the total switching service rendered within the district." (195 I. C. C. 115) (R. 163)

Under the conditions as we have described them above, if the intrastate switching rates within the district cause unjust discrimination against interstate commerce under Section 13 (4), the Commission has the authority to order the state rates increased: *Railroad Commission of Wisconsin* v. *C. B. & Q. R. R.*, 257 U. S. 563; *Florida* v. *United States*, 282 U. S. 194; *Florida* v. *United States*, No. 342, decided April 2, 1934; *United States* v. *Louisiana*, 290 U. S. 70. And in so ordering, it is not necessary, nor is it required that there be a separation between state and interstate movements, revenues, or expenses of the carriers. The case of *Smith* v. *Illinois Bell Telephone Co.*, 282 U. S. 133, cited by appellants, deals with a confiscation case and is not controlling or in point with reference to the issue here involved. It does not deal with discrimination against interstate commerce caused by state rates.

(g) THE INTERSTATE COMMERCE COMMISSION HAS JURISDICTION UNDER SECTION 13 (4) OF THE INTERSTATE COMMERCE ACT AS INTERPRETED BY THIS COURT, TO ORDER THE REMOVAL OF A REVENUE DISCRIMINATION AGAINST THE CARRIERS CAUSED BY A DISCREPANCY BETWEEN STATE AND INTERSTATE RATES.

That Congress has authorized the Interstate Commerce Commission to establish intrastate rates in order to remove an unjust discrimination against interstate commerce cannot be disputed:

Railroad Commission of Wisconsin v. *C. B. & Q. R. R. Co.*, 257 U. S. 563;

Georgia Public Service Commission v. *United States*, 283 U. S. 765;

Alabama v. *United States*, 283 U. S. 776;

New York v. *United States*, 257 U. S. 591;

Louisiana Public Service Commission v. *Texas & New Orleans Railroad Co.*, 284 U. S. 125;

United States v. *Louisiana,* 290 U. S. 70.
Florida v. *United States,* No. 342, decided April 2, 1934.

In the case of *United States* v. *Louisiana,* 290 U. S. 70, it is stated:

> "By Sec. 416 of the Transportation Act, Sec. 13 (4), Interstate Commerce Act U. S. C. Title 49, Sec. 13, directly involved here, the Commission was given power to remove unjust discrimination by intrastate rates against interstate commerce, by prescribing minimum intrastate rates. This court has consistently held that this section is to be construed in the light of Section 15a (2) and as supplementing it, so that the forbidden discrimination against interstate commerce by intrastate rates includes those cases in which disparity of the latter rates operates to thwart the broad purpose of Section 15a to maintain an efficient transportation system by enabling the carriers to earn a fair return."

VI.

The Commission is not required in a case based upon Section 13 (4) of the Interstate Commerce Act involving a revenue discrimination, as it is required in a case involving Section 3 of said Act, to state definitely and precisely which carriers are subject to the terms of the Commission's order.

All of the carriers operating in the Chicago switching district are subject to the Interstate Commerce Act, and handle interstate commerce, and are parties to and subject to the Commission's order requiring the unjust discrimination against interstate commerce to be removed by increasing the state rates to the level of the interstate rates found reasonable by the Commission. There can be

no question but that the unjust discrimination against interstate commerce found by the Commission applies to each of the roads within the Chicago switching district and it is not required, nor is it necessary that the Commission in its report and order point out each individual road and each individual instance where unjust dscrimination is created. This court said in the case of *Railroad Commission of Wisconsin* v. *C. B. & Q. R. R. Co.*, 257 U. S. 563, at page 587:

> "Counsel for appellants are driven by the logic of their position to maintain that the valuation required for the purposes of Sec. 15a to be ascertained pursuant to Sec. 19a of the Interstate Commerce Act (37 Stat. 701; amended 41 Stat. 493), is to be only of that part of the property and equipment of the interstate carriers which is used in commerce among the States and must be segregated from that used in intrastate commerce. This is contrary to the construction which since the enactment of Sec. 19a, March 1, 1913, the Commission has put upon that section in carrying out its injunction. It is inadmissible. The language of Sec. 15a refutes such interpretation. The percentage is to be calculated on 'the aggregate value of the railway property of such carriers held for and used in the service of transportation.' To impose on the Commission the duty of separating property used in the two services when so much of it is used in both; and to do this in a reasonably short time for practical use, as contemplated by the statute, would be to assign it a well-nigh impossible task. This, of itself, prevents our giving the words such a construction unless they clearly require it. They certainly do not."

This court further said on page 589:

> "Congress in its control of its interstate commerce system is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonable compensatory return for all the work it does. The States are seeking to use

that same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is received for the intrastate business reasonably proportionate to that for the interstate business. Congress as the dominant controller of interstate commerce, may therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state work. The affirmative power of Congress in developing interstate commerce agencies is clear. *Wilson* v. *Shaw,* 204 U. S. 24; *Luxton* v. *North River Bridge Co.,* 153 U. S. 525; *California* v. *Central Pacific R. R. Co.,* 127 U. S. 1, 39. In such development, it can impose any reasonable condition on a State's use of interstate carriers for intrastate commerce it deems necessary or desirable. This is because of the supremacy of the national power in this field."

In the case of *Houston East and West Texas Railway Co.* v. *United States,* 234 U. S. 342, at page 355, this court said:

"It is also clear that, in removing the injurious discrimination against interstate traffic arising from the relation of intrastate to interstate rates, Congress is not bound to reduce the latter below what it may deem to be a proper, standard fair to the carrier and to the public. Otherwise, it could prevent the injury to interstate commerce only by the sacrifice of its judgment as to interstate rates. Congress is entitled to maintain its own standard as to these rates and to forbid any discriminatory action by interstate carriers which will obstruct the freedom of movement of interstate traffic over their lines in accordance with the terms it establishes."

Counsel for appellants has overlooked the distinction between an order of the Commission under Section 13 (4) of the Act requiring said rates to be raised in order to remove an unjust discrimination against interstate com-

merce, and orders of the Commission under Section 3 of the Act requiring removal of discrimination between persons and localities.

The opposing counsel have cited the recent case of *Texas & Pacific Ry. Co.* v. *United States,* 289 U. S. 627, which considered an order under Section 3 of the Act dealing with undue preference to New Orleans and undue prejudice to the Texas ports by interstate carriers. State rates were not involved and unjust discrimination against interstate commerce under Section 13 (4) of the Act was not an issue. The case has no application to the one here under consideration. This court pointed out in the case of *Florida* v. *United States,* No. 342, decided April 2, 1934, that:

> "By Transportation Act, 1920 (41 Stat. 484), the Congress granted specific authority to the Commission to remove discriminations against interstate commerce caused by intrastate rates. The Congress amended Section 13 of the Act to Regulate Commerce so as to empower the Commission to confer with state authorities 'with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission.' Sec. 13 (3). And, whenever in the course of its authorized investigations, the Commission after full hearing, finds that any rate, regulation, or practice 'made or imposed by authority of any State' causes 'any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce,' the Commission is required to prescribe the rate thereafter to be charged, or the regulation or practice thereafter to be observed, in such manner as in its judgment will remove the discrimination. The order of the Commission is to bind the carriers, parties to the proceeding, 'the

law of any State or the decision or order of any State authority to the contrary notwithstanding.' Sec. 13 (4)."

The court further said after citing and quoting from the case of *Railroad Commission of Wisconsin* v. *C. B. & Q. R. R. Co.*, 257 U. S. 563:

"We concluded that these words in Section 13 (4) were not tautological, but had the necessary effect of conferring authority upon the Commission to raise intrastate rates so that the intrastate traffic may produce its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of property devoted to the transportation service, both interstate and intrastate. *United States* v. *Louisiana*, 290 U. S. 70, 75."

VII.

The order of the Commission is valid because it is based upon findings predicated upon evidence amply sufficient to support such order under Section 13 (4) of the Interstate Commerce Act.

The statute requires the Commission to find only the ultimate facts. Section 14 of the Interstate Commerce Act (U. S. Code Title 49, Sec. 14) provides, in paragraph 1:

"Whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made."

It is obvious that under the statute, the Commission is expected to make findings of fact only in the event

damages are awarded. Even in such cases, this Court has pointed out that the Commission is required to find only the ultimate facts and not the evidential facts. *Meeker & Co.* v. *Lehigh Valley R. R.*, 236 U. S. 412, 427.

In a case such as that here presented, there is no requirement for anything but the conclusion of the Commission, together with its decision, order or requirement in the premises. As a matter of good practice, it is obviously desirable that in making its decision the Commission should give a sufficient statement in addition to its conclusion to inform the parties, and if the case becomes a subject of litigation in the courts, to apprise the court regarding the essential facts and the reasons underlying the Commission's conclusions. This is in accordance with what this court said in *Florida* v. *United States*, 282 U. S. 194.

An examination of the Commission's report in the present case (195 I. C. C. 89) (R. 137), will show that the Commission gave an elaborate and detailed discussion of the facts developed of record before it. The Commission in its prior report (177 I. C. C. 669) (R. 33), found, at page 711, that "the record does not disclose any difference in the conditions surrounding the handling of interstate and intrastate movements." (R. 75)

In the report and order here under review, the Commission found that the evidence of record showed "that the traffic is handled in a manner similar to the road-haul traffic, and that the operation of the switching trains is comparable to road-haul operation. The business is moved in regular transfer trains consisting of cars for both interstate and intrastate movements, operated under full crews with the air coupled up and supplied with cabooses, and both road-haul and switching business is handled in the same trains." (195 I. C. C. 100) (R. 148) The evidence showed that the manner of handling the traffic

within the district was the same in 1932 as in 1927 (R. 148). The prior report, 177 I. C. C. 669, 711 (R. 75) showed "that all of the parties, both shippers and carriers, were practically unanimous in contending for the establishment of an all-commodity basis to apply throughout the Chicago switching district,". At the further hearing, "the shippers and receivers of freight within the district generally declared that the basis of rates should be the same throughout the district for interstate and intrastate movements, some contending, however, that the level should not exceed the present intrastate rates, while others urged that the same level be maintained provided the all-commodity basis would not exceed 2.5, 3, and 3.5 cents for 1, 2, and 3-or-more-line hauls respectively. The evidence discloses that the traffic, both interstate and intrastate, is handled in the same trains, by the same train crews, and in the same manner." (195 I. C. C. 109) (R. 157)

The evidence of record further shows that all witnesses who testified on the subject objected to zoning the district for rate purposes. The witness for the Chicago Association of Commerce testified (R. 534-5):

> "Unless a uniform basis applies throughout the district, centralization of manufacturers and distributors adjacent to the source of supply will result and cause congestion and increased cost to those sections with a loss of traffic and depreciation of property values in other sections. Many industries are now at points removed from the congested areas. A forecast of the relocation of industries and loss of investment that would result from subdividing the district is impossible."

Witnesses for the Chicago Retail Lumber Association (R. 709-10), for the Grain interests (R. 700), for the By-Products Coke Corporation (R. 565) and for the Con-

sumers Co. (R. 608) testified to the same effect as the witness for the Chicago Association of Commerce.

The Commission's report here under review, 195 I. C. C. 89, at pages 92, 93 and 94 (R. 140-142), discusses anew the cost study that was filed in the first case. At page 95 of the report (R. 143), the Commission elaborates on the contention and evidence by the complainants and protestants (appellants here) with reference to "changed conditions enumerated since the prior record was closed"; some of the contentions are: "(1) falling off in the volume of traffic, (2) improvement in the highways within the district resulting in diversion of much additional tonnage from the rail lines for movement by truck, (3) the decline in value of many of the articles or commodities transported, (4) reduction in wages and cost of supplies, and (5) curtailment in the amount of service rendered by the carriers to the industries within the district."

On page 96 of the report (R. 144), the Commission recites the testimony submitted in regard to truck competition. The evidence before the Commission discloses that "with respect to some traffic the carriers could not make rates low enough to regain the traffic from the trucks to the rail lines" and because "of location of the particular buildings under construction at off-track points, the material would of necessity have to be trucked for some distance even though the initial movement would be by rail." And in such instances "it is clear that it is impossible for the rail lines to compete with the movement by truck under any basis of rates." (R. 144)

At pages 97 and 98 of the report (R. 145-146) the change in conditions as affecting the carriers' revenues is discussed. The evidence shows "that the decrease in tonnage has resulted in increasing * * * unit costs due to the fact that units of traffic have greatly decreased with no opportunity to reduce operating expenses correspondingly

on account of the irreducible minimum having been reached. In other words, a decrease in volume of traffic, unaccompanied by a proportionate decrease in operating expense would cause unit costs to increase rather than diminish."

At page 98 (R. 146), the report shows that for eight switching roads "the total operating expenses per car handled increased from $3.86 in 1928 to $4.04 in 1931." That the operating ratio for these roads increased from 66.97 per cent in 1928 to 74.11 per cent in 1931. The report shows that for nine railroads operating in the Chicago switching district, the total operating revenues "for the year 1931 were approximately $10,500,000 less than for the year 1928, whereas the total operating expenses in 1931, for the same roads, were only $5,500,000 less than in 1928."

At pages 98, 99 and 100 (R. 146-148), the report discusses the comparison of rates applicable within the district with rates prescribed for road haul and with rates on various commodities.

On page 101 of the report (R. 149) the report discusses the evidence of record with reference to comparison of rates in other switching districts.

On page 102 of the report (R. 150) it is shown that "some of the carriers have contracts with truck companies for trucking between various stations within the switching district, for which they pay charges ranging from 5 cents for 1½ miles to 15 cents per 100 pounds for 17 miles, but these charges do not include loading and unloading." Comparisons were made of record "of the similarity of the trucking conditions within Chicago and the St. Louis, Mo. districts." "A cost study made within the St. Louis district developed road-haul costs of $1.014 per ton for average hauls of 2.13 miles, and that with the addition of the

loading and unloading charges, clerical costs, etc., the total cost for an average load of 6.4 tons amounted to $1.56 per ton."

On pages 103 and 104 of the report (R. 151), the evidence with reference to sand, gravel, and crushed stone is discussed.

On pages 104 and 105 (R. 152-153), the evidence with reference to grain and grain products, coal, plant refuse, and other commodities, is discussed.

On pages 107 and 108 (R. 155-156) the evidence with reference to Chicago Heights, Illinois, and evidence with reference to minimum weights is discussed.

On page 108 of the report (R. 156) is set forth the finding of the Commission

> "that the assailed interstate switching rate of 3 cents per 100 pounds for 1-line hauls, 3.5 cents for 2-line hauls, and 4 cents for 3-or-more-line hauls, and the carload minimum weight of 60,000 pounds, applicable within the Chicago switching district and between the district and Chicago Heights, Ill., are not unjust or unreasonable."

At pages 108 to 119 (R. 156-167), the evidence with reference to the Section 13 investigation is considered and discussed.

At page 112 (R. 160) the report points out

> "that many of the industries cannot ship to points within the district except over interstate routes and therefore must pay the interstate rates of 3, 3.5, and 4 cents for one, two, and three-or-more-line hauls, respectively, while the industries which have intrastate routes available may ship on the basis of 2.5 cents for 1-line and 2-line hauls, and 3 cents for 3-or-more-line hauls, in carload minimum 60,000 pounds, and in some instances at lower rates, but usually with higher minima, because of exceptions under the Lowrey rates applicable on intrastate traffic."

On page 113 (R. 161) the report discusses the evidence showing "that during the period, December 10, 1931, to March 31, 1932, 856 cars were specifically routed and moved over the lower rated intrastate routes, which formerly would have moved over interstate routes,". The evidence shows that by reason of the fact that the shippers were shipping via the lower state routes, on the 856 cars referred to above, the revenue loss was $7,656.

On page 114 of the report (R. 162), the evidence with reference to shifting of traffic from interstate to state movements since the increase in the interstate rates on December 10, 1931, is pointed out. On this page of the report, it is pointed out that for the week of November 9 to 15, 1931—which was prior to the effective date of the increase in interstate switching rates—the total of the intrastate traffic in Illinois, for one, two and three line hauls, was 35.39 per cent of the total; while for the week of January 11 to 17, 1932—which week was subsequent to the increase in the interstate rates—this percentage had increased to 38.63. In Indiana, the traffic for the week of November, 1931, represent 7.08 per cent of the total, while for the week of January, 1932, this per cent had increased to 8.12.

Interstate traffic shows the reverse situation. For the week of November, 1931, the interstate traffic was 57.53 per cent of the total while for the week of January, 1932, this percentage had decreased to 53.25. The situation with regard to the traffic between the Chicago switching district and Chicago Heights is also shown on this page of the report. The state traffic for the week of November, 1931—prior to the effective date of the increase in the interstate rates—was $52.93 of the total, while for the week of January, 1932, this percentage had increased to 71.38. The reverse of this situation is shown with reference to

interstate traffic; for the week of November, 1931, the interstate traffic was 47.07 per cent of the total, while for the week of January, 1932, this percentage had decreased to 28.62.

On page 115 of the report (R. 163) the evidence in regard to the average hauls, one-line, two-line, and three lines is set forth and it is pointed out that "switching charges differ from line-haul rates in that they are ordinarily not graded in accordance with either the value of the commodity moved or the distance of movement. As a rule they apply to any haul within the switching district no matter how long or how short it may be." The evidence further shows that "the intrastate hauls within the district range from a fraction of a mile to 54 miles, and there are interstate hauls also which range from a fraction of a mile to 68 miles, with one haul shown as approximately 89 miles." (R. 163) The record further shows "that there are many individual intrastate hauls which are longer than many of the interstate hauls." (R. 164)

On pages 116 and 117 of the report (R. 164-165), the constructive annual loss in revenue is set forth in detail, based upon the difference between the intrastate rates and the interstate rates, applied to the traffic that moved in September, 1926, which was the basis for the cost data presented in the original cost study and which period represents normal times. The estimated loss on an annual basis is shown as $2,864,957. The loss of revenue to the carriers by reason of the lower state rates, based on the traffic that moved in the week of November 9 to 15, 1931, on an annual basis, is shown as $1,057,521; and on the basis of the traffic of January 11 to 17, 1932, the loss caused by the low intrastate rates, on an annual basis, is shown as $1,043,160.

After considering the evidence of record and discussing it fully, as stated above, on page 118 (R. 166), the Commission made its findings. The Commission stated:

> "While the evidence shows that the existing competition by motor trucks is material, and indicates that this means of transportation will be utilized to a greater extent if the intrastate rates are increased, and that therefore, some additional tonnage in all probability will be lost to trucks, or diverted to barge and pipe line movement, *the record nevertheless is convincing that the carriers will derive a substantial increase in revenue if the intrastate rates are increased to the interstate basis, and we so find.*" (Italics ours.)

The further finding of the Commission shows:

> "We further find that the transportation conditions throughout the Chicago switching district are substantially similar; * * * that the maintenance of such lower intrastate rates results and will for the future result in unjust discrimination against interstate commerce." (R. 166.)

There can be no valid contention that the order of the Commission, under Section 13 (4) of the Act is not based upon proper findings and predicated upon substantial evidence.

VIII.

Under the facts, circumstances and the law applicable to this case, the Commission, in its findings and order, was not required to accord any different treatment to grain than to any other commodity.

The record shows that when the uniform all-commodity basis of rates was established for the first time in the Chicago switching district in 1911, grain was one of the commodities omitted from the agreement.

The record shows that the movement of grain between points within the Chicago switching district whether it be state or interstate, is the same as the movement of any other traffic within the district; that such movement has no connection, or is not related to the line-haul movement, but such movement is a merchandising, rather than a transportation problem. The Commission, in its first report, (177 I. C. C. 669, at pages 692-695; R. 56-59) discusses the situation relative to grain.

Exhibit 7-A shows that 435 cars moved in interstate transportation within the district on a two-line haul; that the average cost per car was $17.03; that the revenue received by the carriers for such transportation was $10.68; that 1,130 cars moved in two-line hauls intrastate, within the district in Illinois; that the average cost per car was $14.16; the average revenue was $10.23. The evidence further shows that 31 cars moved in one-line haul intrastate within the district, within Illinois. The average cost was $26.98 per car; the average revenue was $6.30 per car.

The record shows that the purpose of the Commission in instituting Docket 19610, was

> "of inquiry and investigation into and concerning the lawfulness of *all rates and charges* for the switching within the Chicago Switching District of *all carload traffic moving* in interstate commerce, and their relation to like rates and charges for switching in intrastate commerce, with a view to prescribing such reasonable, proper, non-discriminatory, non-prejudicial and otherwise lawful switching rates for said traffic as the facts and circumstances may appear to warrant." (Italics ours) (177 I. C. C. 674; R. 38.)

The grain interests objected to zoning the district. The witness testified (R. 700) "as to zoning a study of Mr. Haynes' map indicates it is an impossible thing."

The principal contention of the grain interests is that grain had moved on a lower basis generally speaking, than

had been accorded to other commodities and that this condition should continue to exist.

The report of the Commission shows that careful consideration was given to the contention of the grain interests and upon the facts the Commission did not find any justification for continuing these exceptions in regard to grain, and therefore made no exceptions in this respect; but from the facts of record, as above pointed out, the Commission's order is a valid and lawful order.

IX.

The rates on state and interstate traffic within the Chicago switching district should be the same because there is no essential difference between the interstate service and the intrastate service.

The switching charges are largely "based on average conditions. In every switching district there will almost invariably be found some hauls so long and so difficult that the cost is in excess of the switching charge collected, but that fact does not show the charges to be less than reasonable, for the question is whether the carrier is receiving adequate compensation for the total switching service rendered within the district." These switching charges "differ from line haul rates in that they are ordinarily not graded in accordance with either the value of the commodity moved or the distance of movement." (195 I. C. C. 115) (R. 163) Practically all parties "were of one accord that one level of rates should apply throughout the district on both interstate and intrastate movements." (R. 164)

The record further shows that the Chicago Association of Commerce, the Retail Lumbermen's Association, the Grain interests, the By-Products Coke Corporation, and

the Stone interests (R. 534, 565, 608, 700, 709) were opposed to zoning. Therefore in establishing an all-commodity basis, which is the equivalent to a postage-stamp rate, average conditions had to be made controlling.

The Commission has the authority and power to determine the basis of rates that is best fitted to serve the territory under consideration. In considering the average conditions prevailing throughout the Chicago switching district, all factors had to be, and were, given consideration. In determining charges in a switching district, distance is but a minor factor. The average miles of one-line, two-line and three-line hauls, within the district, both state and interstate, necessarily differ because of the fact that the interstate includes the district as a whole while the intrastate is only a portion of the whole. In determining the cost of performing switching service in the Chicago switching district, the record shows that the different elements of service were determined, and that the element of distance as representing a service was the least important of all of the elements of service rendered, as is exampled in the transfer service. The record shows, by computations from Exhibits 90 and 91, that of the four railroads of the Chicago switching district that cross the state line, namely, the Baltimore & Ohio Chicago Terminal Ry., the Elgin, Joliet & Eastern Ry., the Indiana Harbor Belt Ry. and the Pennsylvania Railroad— all four of which were used in the cost study— the elements of service on both state and interstate traffic are practically the same. The weighted average number of elements of service composing an index number* for interstate traffic was 14; similarly the average number of elements of service com-

*All cars moving over a certain route normally receive the same elements of service peculiar to that route. The total cost per car of all elements of service embraced in a given route are combined under an index number. Or, stated in another way, all different services rendered in furnishing transportation from one industry to another, within the district, are combined under one index number for each railroad.

posing an index number on Illinois intrastate traffic was 13.7; on Indiana intrastate movements, the average number of elements of service composing an index number was 12.4. Stated in another way, using the interstate elements of service composing an index number as 100 per cent, Illinois intrastate represents 97.9 per cent and Indiana, 86.6 per cent. From Exhibit 6 (copy attached to this brief as an appendix), it will be noted that the area of the district lying within Indiana represents but 10.3 per cent of the total; yet the record shows that almost 50 per cent of the traffic that is handled within the district has its origin or destination within Indiana.

The record shows (195 I. C. C. 114) (R. 162) that "the interstate traffic within the district was 40.29 per cent of the entire movement, in September, 1926, the Illinois intrastate movement being 53.31 per cent, and the Indiana intrastate, 6.40 per cent." Using the traffic that moved in the week of November 9 to 15, 1931, the record shows that the interstate traffic equalled 57.53 per cent, while Illinois intrastate traffic equalled 35.39 per cent, and Indiana, 7.08 per cent. And using the week of January 11 to 17, 1932, the record shows that the interstate traffic equalled 53.25 per cent of the total while Illinois intrastate equalled 38.63 per cent, and Indiana, 8.12 per cent.

The record shows that there are single-line, intrastate, hauls within Illinois that are longer than interstate hauls within the district. It is further shown that there are single-line hauls that are longer than two-line hauls, or three-line hauls. This is a natural condition in a switching district the size of the Chicago switching district, and it necessarily follows that under such conditions, if a uniform rate is to apply throughout the district, rates must be based upon average conditions, and since distance is no important factor in the development of a switching cost, and as the record shows the difference in distance is the

only factor considered by appellants, it necessarily follows that all other factors used in determining the cost are practically the same.

X.

The court below in its decision and order did not contravene the requirements of Equity Rule 70½.

Equity Rule 70½ provides:

> "In deciding suits in equity, including those required to be heard before three judges, the court of first instance shall find the facts specially and state separately its conclusions of law thereon; and its findings and conclusions shall be entered of record and, if an appeal is taken from the decree, shall be included by the clerk in the record which is certified to the appellate court under rules 75 and 76."

On November 3, 1933, the court below filed its findings of fact and propositions (conclusions) of law. The findings of fact are stated on pages 1307 to 1315 of the record; its propositions (conclusions) of law are separately stated and appear at pages 1315 and 1316 of the record. We do not consider it necessary to point out that Equity Rule 70½ has been complied with since appellants appear to have abandoned this assignment of error, as counsel state on page 161 of their brief:

> "Appellants bring this matter to the attention of the court by assignment of error, but they specifically pray that action by this court shall not extend to a remanding of the case to the district court for special findings of fact and conclusions of law thereon appropriate to the decision as required by Equity Rule 70½, as such action would only result in delay in determining the validity of the Commission's order of July 3, 1933."

CONCLUSION.

The Commission's order of July 3, 1933, is a valid exercise of the authority conferred by Section 13, paragraphs (3) and (4), of the Interstate Commerce Act and the Commission's authority is not affected by provisions of the Emergency Railroad Transportation Act, 1933. The order was entered after a full hearing, as is required by law, and is based on special findings supported by substantial evidence, and was rendered after a full hearing.

The order of the Commission of July 31, 1931, establishing reasonable rates for interstate switching within the Chicago switching district has never been questioned in any court and its validity is not an issue in this case.

The Commssion in its order of July 3, 1933, found that the interstate rates for switching within the Chicago switching district were not unjust or unreasonable, and ordered the formal complaint, Docket 24950, dismissed. This order of the Commission is not an issue here.

The order of July 3, 1933, finding that "the maintenance of such lower intrastate rates results, and will for the future result in unjust discrimination against interstate commerce" is a valid and lawful order.

It is respectfully submitted that the order and decree of the court below, sustaining the validity of the Commission's order and denying the prayer of the Bill of Com-

plaint to enjoin, set aside, annul, and suspend, the Commission's order entered July 3 1933, should be affirmed.

Respectfully submitted.

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Chicago, Illinois,
April 23, 1934.

DES PLAINES
FRANKLIN PARK
MELROSE PARK
BELLEWOOD
BROADVIEW
FOREST PARK
GALEWOOD
CRAGIN
HAYFAIR
CHICAGO
LAKE
DU PAGE COUNTY
COOK COUNTY

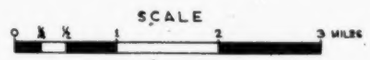
CH

I. C. C. Docket 19610
I. & S. Docket 2900
Exhibit No. 6
Witness SAUER

MAP OF

CHICAGO SWITCHING DISTRICT

AND VICINITY



MICHIGAN

SOUTH CHICAGO

LAKE CALUMET

HARVEY JCT.

CHICAGO RIDGE

COOK COUNTY

COST STUDY RAILROADS SHOWN IN RED
NON STUDY RAILROADS SHOWN IN BLACK

PREPARED UNDER THE SUPERVISION OF
THE CHICAGO SWITCHING COMMITTEE
ILLINOIS FREIGHT ASSOCIATION
C.W. BALLIGAN, Agent
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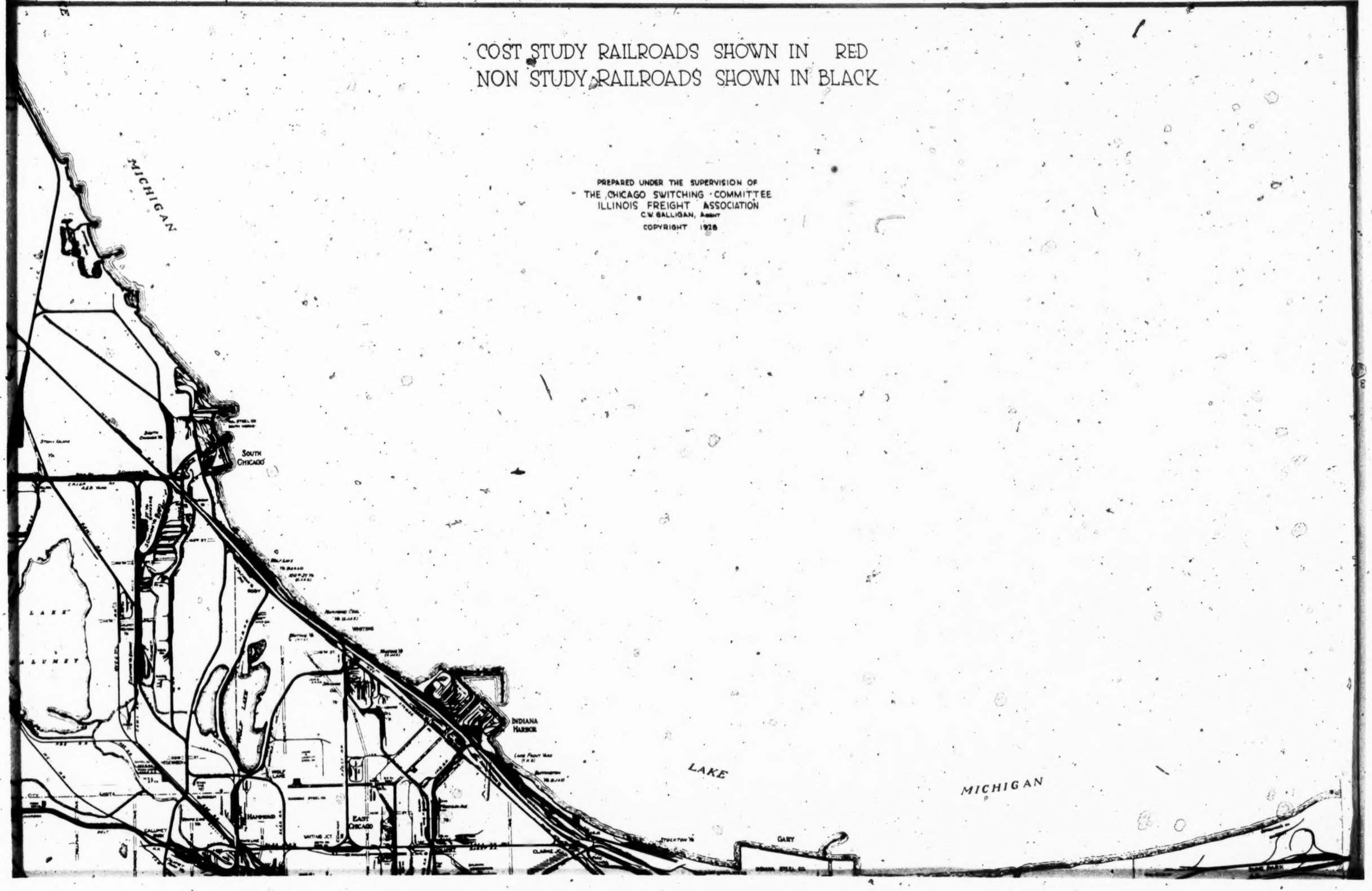

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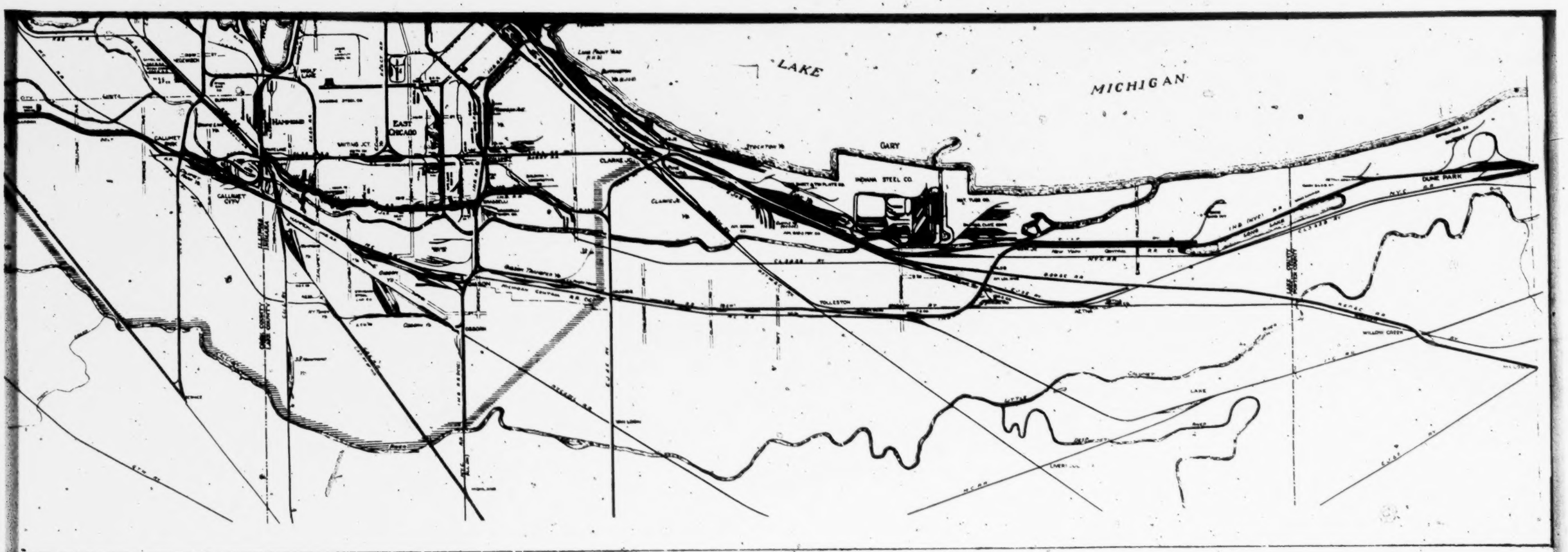

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APPENDIX B.

The Interstate Commerce Act, as amended by Transportation Act, 1920, (41 Stat. 456) provides:

SECTION 13 (3). Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such state regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act.

SECTION 13 (4). Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination

against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

SECTION 15a (2). In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish, or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided,* That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

SECTION 15a. (3). The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient, and economical management of existing transportation facilities) of enlarging such facilities in order to pro-

vide the people of the United States with adequate transportation: *Provided,* That during the two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5½ per centum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one per centum of such aggregate value to make provision in whole or in part for improvements, betterments or equipment, which, according to the accounting system prescribed by the Commission, are chargeable to capital account.

By Emergency Railroad Transportation Act, 1933, Section 205, (c. 91, 48 Stat. 211, 220, approved June 16, 1933) section 15a of the Interstate Commerce Act was amended to read as follows:

SEC. 15a. (1) When used in this section, the term 'rates' means rates, fares, and charges, and all classifications, regulations, and practices relating thereto.

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service.

Other pertinent provisions of Emergency Railroad Transportation Act, 1933, are as follows:

SEC. 2. In order to foster and protect interstate commerce in relation to railroad transportation by preventing and relieving obstructions and burdens thereon resulting from the present acute economic emergency, and in order to safeguard and maintain an adequate national system of transportation, there is hereby created the office of Federal Coordinator of Transportation, who shall be appointed by the Presi-

dent, by and with the advice and consent of the Senate, or be designated by the President from the membership of the Commission.

SEC. 10. (a) The carriers or subsidiaries subject to the Interstate Commerce Act, as amended, affected by any order of the Coordinator or Commission made pursuant to this title shall, so long as such order is in effect, be, and they are hereby, relieved from the operation of the antitrust laws, as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, and of all other restraints or prohibitions by law, State or Federal, other than such as are for the protection of the public health or safety, insofar as may be necessary to enable them to do anything authorized or required by such order made pursuant to this title: *Provided, however,* That nothing herein shall be construed to repeal, amend, suspend, or modify any of the requirements of the Railway Labor Act or the duties and obligations imposed thereunder or through contracts entered into in accordance with the provisions of said Act.

(b) The Coordinator shall issue no order which shall have the effect of relieving any carrier or subsidiary from the operation of the law of any State or of any order of any State commission until he has advised the State commission of said State, or the Governor of said State, if there be no such commission, that such order is in contemplation, and shall afford the State commission or Governor so notified reasonable opportunity to present views and information bearing upon such contemplated order, nor unless such order is necessary, in his opinion, to prevent or remove an obstruction to or a burden upon interstate commerce.

SEC. 206. (a) All moneys which were recoverable by and payable to the Interstate Commerce Commission, under paragraph (6) of section 15a of the Interstate Commerce Act, as in force prior to the enactment of this title, shall cease to be so recoverable and

payable; and all proceedings pending for the recovery of any such moneys shall be terminated. The general railroad contingent fund established under such section shall be liquidated and the Secretary of the Treasury shall distribute the moneys in such fund among the carriers which have made payments under such section, so that each such carrier shall receive an amount bearing the same ratio to the total amount in such fund that the total of amounts paid under such section by such carrier bears to the total of amounts paid under such section by all carriers; except that if the total amount in such fund exceeds the total of amounts paid under such section by all carriers such excess shall be distributed among such carriers upon the basis of the average rate of earnings (as determined by the Secretary of the Treasury) on the investment of the moneys in such fund and differences in dates of payments by such carriers.

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APR 24 1934

No. 787

In the Supreme Court of the United States

OCTOBER TERM, 1933

ILLINOIS COMMERCE COMMISSION, ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

APRIL 1934.

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ILLINOIS COMMERCE COMMISSION, ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., appellees

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

No opinion was rendered by the specially-constituted District Court, but on November 3, 1933, its findings of fact and conclusions of law were entered. (R. 1307.) The reports of the Interstate Commerce Commission (R. 33, 137) appear as Docket No. 19610, *Switching Rates in Chicago Switching District*, and are reported in 177 I.C.C. 669 and 195 I.C.C. 89.

JURISDICTION

The final decree of the District Court was entered November 8, 1933. (R. 1316.) Petition for appeal was filed November 16, 1933, and allowed on the same

day. (R. 1332.) The jurisdiction of this court is founded upon the Urgent Deficiencies Act of October 22, 1913, c. 32, 32 Stat. 203, 219, 220 (U.S.C., Title 28, Sec. 47a) and Section 238 of the Judicial Code, as amended by Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U.S.C., Title 28, Sec. 345).

QUESTIONS

Following the establishment of increases in interstate (Illinois-Indiana) switching rates within the Chicago switching district pursuant to authority granted by the Commission in a case also involving the intrastate (Illinois and Indiana) switching rates within said district, but as to which latter the Commission made no specific finding or order in the hope that the State Commissions would bring them into harmony, and following denial by said State Commissions of applications of the carriers for authority to increase their said intrastate switching rates to the same basis, the Interstate Commerce Commission, upon motion of the carriers, reopened the case and, after further hearings, entered an order requiring that the increases be made, to the end of removing the "revenue burden" discrimination shown to be caused by the lower basis, intrastate than interstate, of said carriers' switching rates within the district.

The questions presented are (1) whether the interstate switching rates established by the carriers at the level found reasonable by the Commission in its first report, which finding was reaffirmed in its second report, constituted valid bases of reasonable rates for use by the Commission in reaching its determination

that said carriers' intrastate rates caused unjust discrimination against interstate commerce; (2) whether the Commission's findings of fact were adequate, (3) whether there was substantial evidence in support of said findings, and (4) whether the Commission abused its discretion in denying petition for rehearing based on allegations of changed conditions.

STATUTES INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix.

STATEMENT

1. Nature of appeal

This is a direct appeal by the Illinois Commerce Commission, the Public Service Commission of Indiana, and the Acme Steel Company from a final decree (R. 1316) of the District Court for the Northern District of Illinois, sitting as a specially constituted three-judge court, sustaining the validity of the Commission's order of July 3, 1933.

2. The order in question

The Commission's order (R. 168) was issued in exercise of its power (Interstate Commerce Act, sec. 13 (3) and (4)) to remove unjust discrimination against interstate commerce caused by rates imposed by State authority; and it required that the intrastate switching rates of interstate railroads operating in the Chicago switching district, which is partly within Illinois and partly within Indiana, should be not less than the interstate switching rates contemporaneously

applied by said carriers, namely, 3 cents per 100 pounds for 1-line hauls, 3.5 cents for 2-line hauls, and 4 cents for 3-or-more-line hauls,[1] carload minimum 60,000 pounds, applying on an all-commodity basis, except railway equipment on its own wheels. For interstate switching within the district, these rates had theretofore been established by the carriers, effective December 10, 1931 (R. 139), pursuant to the Commission's first report and order in the case, *Switching Rates in Chicago Switching District*, 177 I.C.C. 669 (R. 33). At that time the Commission made no specific finding or order with respect to the intrastate rates in the hope that the Illinois and Indiana Commissions would "bring their rates in harmony with the conclusions herein." Following denial by said Commissions of the carriers' applications for authority to make the increases and following reopening of the interstate case and further hearing, the aforesaid order of July 3, 1933, requiring that the intrastate switching rates be increased to the interstate level, was entered. *Switching Rates in Chicago Switching District*, 195 I.C.C. 89 (R. 137–168c).

The switching rates here involved are for intradistrict switching, that is, for movements originating and terminating within the district. "Intradistrict switching is a complete service in and of itself, having no relation to any road-haul movement. * * * The use of the car in this service, therefore, doubtless is greater than the use in any other class of

[1] Hauls in which several distinct carriers participate.

switching service, involving, as it does, both loaded and empty movements and two complete terminal services." (First Report, R. 48.) "Switching charges differ from line-haul rates in that they are ordinarily not graded in accordance with either the value of the commodity moved or the distance of movement. As a rule they apply to any haul within the switching district no matter how long or how short it may be." (Second Report, R. 163.) More important than distance are the two complete terminal services, the time consumed in rendering the service, and the desirability in the interests of all concerned of a uniform basis. (R. 48, 163.)

The Chicago switching district is divided by the Indiana-Illinois State line, on each side of which "are located industries which ship and receive commodities of the same general nature." The rates which were displaced interstate by the Commission's first order were, with exceptions, rates made on the so-called Lowrey basis of 2.5 cents for 1-line and 2-line hauls and 3 cents for 3 or more line hauls. The Lowrey basis was also applicable intrastate, with exceptions both under and over that basis. "The shippers and receivers of freight within the district generally declared that the basis of rates should be the same throughout the district for interstate and intrastate movements (the measure or level of that basis being the matter of contention) * * * the traffic, both interstate and intrastate, is handled in the same trains, by the same train crews, and in the same manner." (Second Report, R. 157.)

3. History of Chicago switching rates.

The Chicago Switching District limits are set out in Appendix A to the July 21, 1931, report. (R. 76.) The district is about 40 miles long and from 7 to 15 miles wide, densely populated. It is the largest switching district in the country, comprising over 600 square miles, is served by 35 railroads, which maintain within its boundaries a network of more than 5,000 miles of track, serving over 4,000 private industries. (R. 39, 40.) The average length of haul between points in the district is 13.19 miles for one-line hauls, 21.32 miles for two-line hauls, and 26.53 miles for three-line hauls. (R. 43.) Prior to August 1, 1911, the rates, charges, and practices of the carriers covering switching services within the district were in a chaotic condition. Each carrier published tariffs naming rates local to its line and based on its own local conditions. No joint rates were in effect. As these conditions were intolerable, what is known as the Lowrey basis of rates was established. (R. 40.)

The Lowrey basis of rates is described on page 676 of the original report as follows: "During 1910 a joint committee was organized composed of shippers and carriers with the object of establishing some uniformity in the local switching rates. After many conferences various differences were harmonized and an agreement was entered into, since known as the Lowrey agreement, which was translated into an all-commodity tariff, effective August 1, 1911, establishing uniform individual and joint rates on all commodities with a few exceptions, such as coal, coke,

and grain. The exception as to coal and coke was removed in June, 1927. The so-called all-commodity rates published under the Lowrey agreement were 1.5 cents for 1-line and 2-line hauls, and not to exceed 0.5 cent for each additional line haul, minimum 60,000 pounds. Due to the general increases and reduction in rates since 1911 the present all-commodity rates are 2.5 cents for 1-line and 2-line hauls, and 3 cents for 3-or-more line hauls, as compared with the proposed rates of 3, 3.5, and 4 cents, respectively, minimum 60,000 pounds."

4. Proceedings before the Commission

Leading up to the proceeding here involved: In *Jones & Laughlin Steel Corp.* v. *B. & O. R.R. et al.*, 96 I.C.C. 682, decided April 15, 1925, the Commission prescribed a distance scale of rates on iron and steel articles from the Pittsburgh group to St. Louis and to certain destinations in Illinois and Indiana, and found existing rates on the same articles from certain origins in Illinois and Indiana to the same destinations to be unduly preferential. Schedules filed by the defendant carriers to conform their rates in Illinois Freight Association territory with that order were suspended by the Commission for failure, among other things, to realign at the same time the rates on iron and steel articles within the Chicago switching district. This suspension was subsequently vacated, and, at the request of the Commission, the carriers gave consideration to a realignment of said rates. As a result, tariffs were filed naming rates to apply within the district of 3, 5.5 and 6.5

cents, respectively, for one, two and 3 or-more-line hauls. Upon protest, these schedules were suspended in I. & S. Docket No. 2780. (R. 37.)

In the meantime numerous conferences were held between the carriers and shipper representatives with a view to reaching an amicable adjustment of rates on all commodities moving within the district, as a result whereof schedules were filed with the Interstate Commerce Commission and the Illinois and Indiana Commissions naming rates of 3, 3.5, and 4 cents to supersede the effective rates (the Lowrey rates) of 2.5, 2.5 and 3 cents, respectively, for 1-line, 2-line, and 3-or-more line hauls, such rates to apply on all commodities except grain and grain screenings and railway equipment, and excepting livestock via the Baltimore & Ohio Chicago Terminal Railroad; and also naming similar rates to apply between Chicago Heights [2] and points in the district. (R. 37, 38.) These schedules were suspended in I. & S. Docket No. 2900, and in view of the limited record that could be developed in the suspension proceeding, the Commission on its own motion instituted the proceeding, here involved.

> of inquiry and investigation into and concerning the lawfulness of all rates and charges of common carriers by railroad subject to the interstate commerce act for switching within the

[2] Chicago Heights is an industrial center adjacent to the Chicago switching district. (R. 70.) Its manufacturers' association urged that the Chicago switching district boundaries be extended to include it, or that, in any event, the present rate relations be maintained. (R. 40.)

> Chicago Switching District of all carload traffic moving in interstate or foreign commerce, and the relation thereto of the rates and charges for like switching in intrastate commerce, with a view to prescribing such reasonable, proper, nondiscriminatory, nonprejudicial, and otherwise lawful switching rates for said traffic as the facts and circumstances may appear to warrant; * * *. (R. 38)

As heretofore said, applications were pending before the Illinois and Indiana Commissions to increase the so-called Lowrey rates, as applicable intrastate, to the same basis as proposed interstate, and these cases were heard jointly with the interstate investigation, representatives of those State Commissions cooperating "in the supervisory field work entailed as well as in the conduct of the hearings and oral argument." (R. 39, 138, 1312.)

An important part of the evidence considered at the first hearings consisted of a cost study made in response to the request of the Commission for preparation of statistics relating to the shortest, longest, and average hauls within the switching district, to be accompanied by detailed cost data. The study as made was based upon the Coverston-Saur formula and embraced seven trunk lines and eight switching and terminal roads operating in the district. (R. 41.) The Commission said of it that "while the above formula has been the basis of cost studies presented in previous switching cases, its application in these proceedings apparently is the most elaborate and comprehensive to date." (R. 42.)

The required statistics relating to switching hauls were obtained in September, 1926, and were compiled on 42,666 cars which moved during that month in intra-district switching service within the district. The cost data were obtained by a joint cost study collaborated in by the fifteen roads, aforesaid. Under the plan of the study, the expenses incurred were segrated into three general classes, namely, clerical, switching and car detention or maintenance. Taxes and returns on investment were provided for by use of an estimated operating ratio, applied as a divisor to expand the determined costs so as to embrace those elements. The study was extended to each one of the 69 commodity classes for one, two, and three-line hauls segragated between interstate, intrastate Illinois, and intrastate Indiana. The test periods within which the unit costs were determined were for one week on each of the fifteen roads during June, August, and October, 1927. The unit costs so determined were then applied to 26,166 cars, or 61.33 percent of those embraced in the traffic analysis as of September, 1926, this number having moved wholly over the study roads during that month. These cars were called study cars to distinguish them from cars not included in the study, which were designated as non-study cars. (First Report, R. 41–42.) Applying an operating ratio of 66.67 percent, provided for in the Coverston-Saur formula, the study showed the average cost of switching to be 2.8 cents per hundred pounds for one-line hauls, 3.4 cents for two-line hauls

and 3.8 cents for three-line hauls. (Second Report, R. 43.)

The exactness of the cost figures under the formula used were questioned both by the carriers and by the shippers, the carriers claiming that the costs were understated in various important particulars, and the shippers asserting on various grounds that they were overstated. These criticisms are discussed and analyzed at length in the Commission's first report. (R. 44–51.)

In a table set forth in said report (R. 52) it was shown that, giving effect to the extensive movements on exceptions over and under the standard Lowrey basis of rates, the weighted average revenue was 2.1, 2.6, and 3.5 cents as compared with said Lowrey basis of 2.5, 2.5, and 3 cents for one, two and three-line hauls; and that, giving effect to exceptions under and over the new proposed Lowrey basis, the weighted average revenue would have been 2.5, 3.6, and 4.2 cents as compared with proposed Lowrey basis of 3, 3.5, and 4 cents. Commenting on this showing, the report calls attention to the fact that, when all the traffic is considered, the amounts of increase on the one-line and three-line hauls are less than indicated by the proposed changes in the Lowrey rates and that, while both interstate and intrastate traffic contribute to the deficiency, the principal factor is the large amount of tonnage that moves and would continue to move in 1-line hauls intrastate in Illinois on exceptions under the Lowrey basis. (R. 53.)

In a further table set forth in the report (R. 54), also taking into account the exceptions from the Lowrey rates, it was shown that the ratio of operating expense to weighted average revenues, under existing rates was, for 1-line hauls, 93.14 percent, for 2-line hauls, 92.83 percent and for 3-line hauls 86.51 percent; and that, under the proposed rates, said operating ratio was for 1-line hauls, 77.55 percent, for 2-line hauls 63.77 percent and for 3-line hauls 65.62 percent. Thereafter the report reads:

> It is quite evident from the high ratio of operating expenses to the revenues that the present rates are too low. The record contains no suggestions of operating ratios that approach as high as 86.51 percent, which is the lowest ratio indicated above at the present rates. The highest ratios suggested by the shippers range from 72.20 to 76.80 percent, and the highest suggested by the carriers is 66.67 percent. * * * (R. 54.)

Concerning what might be a proper operating ratio, the Commission, after further discussion which will be later developed, stated that the question resolved itself largely into a matter of opinion.

In addition to the cost study and as confirming that the proposed rates were fully justified, the Commission applied additional tests. After mentioning that the hauls involved range from a minimum of 0.1 mile to a maximum of 61.1 miles and that the average hauls are 10.8 miles for 1 line, 21.6 miles for 2-line, 24.5 miles for 3-line, and 18 miles for 1-, 2-, and 3-line hauls combined, it said that these hauls are of such

great average lengths as to suggest that they are in effect line-hauls, and except for the fact that they are performed wholly within a district of such unusual size as the Chicago switching district, they would be subject to the usual line-haul rates for such distances. The Commission then cited cases in which it had prescribed rates for line hauls on low grade commodities, mentioning among others the *Southwestern Brick Cases*, 107 I.C.C. 681, in which a distance scale on brick and related articles was prescribed, the single-line scale commencing with a rate of 4.5 cents for hauls of 10 miles and under with 1 cent added for joint-line haul. The report also mentions *Iron and Steel Investigation*, 155 I.C.C. 517, in which a scale of rates was prescribed throughout official territory on iron and steel articles which commenced with 6 cents for 5 miles and under, and for the 15- to 20-mile block, representing the average hauls within the Chicago district, a rate of 8 cents (Later voluntarily lowered to 5.25 cents. See second report (R. 147) and page 38 this brief) was prescribed. The report then reads:

> This, and numerous other similar comparisons which could be shown, covering rates prescribed on various low-grade commodities for short hauls, indicates that the rates under suspension are considerably lower than the rates prescribed by us for similar distances in line haul movements. (R. 70.)

The Commission's findings in its first report, insofar as they need be set forth here, read:

> The ascertainment of the cost of performing a particular service is always beset with

serious difficulties, and this is particularly true in connection with switching costs within an area as congested as the Chicago switching district, which presents a complicated network of rail lines probably not equaled in any other section of the country. The cost study presented herein is perhaps more exhaustive than any heretofore undertaken in any proceeding involving switching charges. Considering these facts and the further fact that all of the parties, both shippers and carriers, were practically unanimous in contending for the establishment of an all-commodity basis to apply throughout the Chicago switching district, it appears that the rates proposed for the one-, two- and three-or-more-line movements are not excessive. We find:

(a) That the rates proposed of 3 cents per 100 pounds for 1-line hauls, 3.5 cents for 2-line hauls, and 4 cents for 3-or-more line hauls, carload minimum 60,000 pounds, within the Chicago switching district as defined in Appendix A, will not be unreasonable for the future for application on all of the commodities switched within the district, except railway equipment on its own wheels. * * *. (R. 75–76.)

The Commission's order, dated July 31, 1931, prescribed maximum rates as specified in the above findings, which were established as of December 10, 1931, and have since been in effect for interstate switching within the Chicago switching district. (R. 83.)

On the question of the relation of the intrastate switching charges involved, the Commission said in its first report:

> A large percentage of the traffic under consideration is intrastate in character, but the record does not disclose any difference in the conditions surrounding the handling of the interstate and intrastate movements. In the hope that both the Illinois Commerce Commission and the Public Service Commission of Indiana will bring their rates in harmony with the conclusions herein, no specific finding or order with regard to intrastate rates will be entered at this time. (R. 75.)

Applications by the carriers for authority to establish increased rates for intrastate switching equal to those made effective for interstate switching within the district were denied by the Illinois and Indiana Commissions. (R. 335, 414.) Thereafter, the carriers petitioned the Interstate Commerce Commission for an order for the establishment of said rates on the record as already made in the case. The Commission denied this petition (R. 9–10) but, upon appropriate motion by the carriers, reopened the proceeding for further hearing to determine—

> Whether the adjustment of the interstate and intrastate rates and charges is unduly prejudicial to interstate shippers and traffic and unjustly preferential of intrastate shippers and traffic, or unjustly discriminatory against interstate commerce, in violation of Section 13 of the Interstate Commerce Act. * * *. (R. 139.)

On December 23, 1931, complaint was filed, Docket 24950, by the Acme Steel Company and other shippers and receivers of freight between points within the Chicago switching district, complaining that the interstate rates which became effective on December 10, 1931, were unjust and unreasonable. The carriers moved for the dismissal of this complaint without a hearing. That motion was denied and the two cases, the reopened Docket 19610 and the formal Docket 24950, were set for hearing. While the records in the two cases were separately kept, it was stipulated that any material or relevant testimony of record in the one case should be considered as part of the record in the other case. (R. 139.)

At the hearing in the complaint case, the attack on the reasonableness of the interstate switching rates was based generally on two grounds, namely, that the cost study should have been made on all 35 railroads operating in the district and that the record had become stale. While the shippers asserted that the cost study was not representative because all roads were not used the only specific criticisms of the selection made were directed to the inclusion of the Elgin, Joliet & Eastern and exclusion of the Chicago Junction Railway. As to the former, the Commission had said in its first report that "the record does not indicate that the inclusion of the E. J. & E. has inflated the unit costs, and in fact one of the exhibits filed by the shippers indicates that the engine hour costs are lower with that carrier

included than if it is excluded." (R. 54.) The shippers' exhibit referred to is Exhibit 13. As to the omission of the Chicago Junction, it does not seem that that road could well have been included "due to the volume of 1-line short-haul undiversified traffic handled between packing houses on its line. Its movements range from 200 feet to a mile. It is obvious that those movements are not representative of the intra-district hauls performed within the district." (Second report, R. 158–159.)[3] Concerning the allegations that the record had become stale since the interstate rates had been prescribed and established within the switching district, the principal changed conditions specified by the complainants were (1) falling off in volume of traffic, (2) increased truck competition, (3) decline in value of commodities transported, (4) reduced wages and cost of supplies, and (5) curtailment in amount of service rendered by the carriers to the industries within the district. (R. 95.)

[3] Appellants' brief in this Court (p. 81) states: "It was urged in the court below that the cost study of record required the expenditure of about $250,000 and as one ground for not having a new and a representative cost study that the additional cost would have been $1,000,000. The fact that an accurate and correct cost study might be extremely expensive is no justification for the use of a less expensive cost study which does not reflect current facts." As judged by the reports of the Commission, its refusal to demand of the carriers the new and additional cost studies was governed by the lack of merit in appellants' objections to the representative study and the fact that the effect of changed conditions on the rates could be considered without need for the further detailed studies specified as necessary by appellants.

All these matters were given consideration by the Commission. The defendant carriers' position in the complaint case was that the only issue involved was whether the interstate rates established in conformity with the Commission's order violated section 1 and that they were warranted in relying upon the findings of reasonableness in the first report, the complaint having been filed but 13 days after the effective date of the rates. They contended that the decrease in tonnage had increased their unit costs and submitted exhibits as to the eight switching roads showing that total operating expenses per car had increased from 3.86 in 1928 to $4.04 in 1931. (Second report, R. 97–98.) Tax accruals were 48 cents in 1928 and 61 cents in 1931, and their operating ratio increased from 66.97 percent to 74.11 percent. (R. 949–950; exhibit 107.) Similar information concerning the trunk lines used in original cost study is shown in exhibit 108. Their operating ratio increased from 73.8 percent in 1928 to 78.45 percent in 1931. (R. 950.)

The Commission's second report, among other things, refers to the comparison made in its first report with distance scales prescribed for line-haul movements in various cases, including *Iron and Steel Articles*, 155 I.C.C. 517. (R. 98, 99.) It discusses complainants' exhibits with respect to other line-haul rates. (R. 99.) The report states that the fifth-class rate prescribed in eastern class-rate revision, is 11 cents for 5 miles and 12 cents for 20 miles, and the sixth-class rate is 8 cents for 5 miles and 9 cents for 20

miles. It further mentions testimony of various operating officials and of a witness for the Inland Steel Company to the effect that the handling of the switching traffic is comparable to road-haul operations. Answering complainants' objection to such comparison, made apparently on the assumption that the cost of performing switching service is less than the cost involved in line-haul movements, the Commission cites *Stielow Bros. Co.* v. *C. & N. W. Ry. Co.*, 52 I.C.C. 339, wherein it was recognized that a switching service, especially where congestion prevails, is more expensive than a road haul for a like distance. (R. 148–149.)

With respect to the question of minimum carload weight, the report reads "the evidence discloses that the traffic generally loads to and in excess of 60,000 pounds, and the record does not establish that the 60,000-pound minimum is unreasonable. (R. 155–156.) The ultimate finding in the complaint case reads:

> We find that the assailed interstate switching rate of 3 cents per 100 pounds for 1-line hauls, 3.5 cents for 2-line hauls, and 4 cents for 3-or-more-line hauls, and the carload minimum weight of 60,000 pounds, applicable within the Chicago switching district and between the district and Chicago Heights, Ill., are not unjust or unreasonable. The complaint accordingly will be dismissed. (R. 156.)

The report's discussion in respect of the unjust discrimination caused by the lower intrastate switching rates follows the above finding affirming the inter-

state level. It is recited that the proceedings embrace all of the 69 commodity groupings into which the freight traffic has been classified; that in each of the groups are involved both interstate and intrastate movements; that much of the intrastate traffic moves on the so-called Lowrey basis, the same rate and minimum weight applying to each commodity irrespective of difference in the length of haul; that the shippers and receivers of freight generally declared that the basis of rates should be the same throughout the district for interstate and intrastate movements; and that "The evidence discloses that the traffic, both interstate and intrastate, is handled in the same trains, by the same train crews and in the same manner." (R. 156–157.) The report further states that many of the 35 railroads operating within the district cannot move traffic from an industry on the Indiana side to an Indiana destination without crossing the State line, and, likewise, must cross the State line in a movement from Illinois industries to destinations in that State; that some of the activities are located on both sides of the State line, and that some of the assembly yards and interchange tracks overlap State lines. (R. 159.) It is further stated (R. 160–162), that while many industries within the district can ship to points within its boundaries only over interstate routes and must, therefore, pay the rates found reasonable for interstate movements, many other industries have intrastate routes, and because of the refusal of the State Commissions to raise the intrastate rates, are enabled to resort to unnatural

circuitous and expensive routes against the flow of the traffic in order to obtain the lower intrastate rates. The failure of any interstate shipper to show injury resulting from the higher interstate rates was explained by the Commission as follows:

> * * * But the record strongly suggests that the failure of any interstate shippers or manufacturers to testify in the proceeding may be accounted for in large part by the fact that most of them, having intrastate routes available, now have the benefit of the lower intrastate rates, and in part was actuated by the hope and belief that their failure to present the necessary specific evidence of competition with intrastate traffic and shippers would ultimately result in the restoration of the prior existing rates for interstate movements. (R. 160.)

A table set forth in the report (R. 162) and discussion following shows that the maintenance of the lower intrastate than interstate rate basis had resulted in a substantial increase in intrastate hauls and corresponding decrease in interstate hauls, with commensurate revenue loss (see also Exh. 7–A). The report sets forth the carriers' estimates of revenue loss due to the maintenance of the lower intrastate rates. Based on traffic conditions prior to the business depression, and asserted as representing normal conditions, this loss is shown as $2,864,957 annually. Further estimates (representative of present conditions) based on traffic and revenue studies for periods prior and subsequent to the increase in the interstate

rates show a constructive annual loss of $1,057,521 resulting from the lower intrastate rates. (R. 164.) The Commission stated that, in those figures, the carriers relied on the assumption that all the traffic would continue to move at the higher rates, which was not a fair assumption. However, following full discussion of conditions in the district, including motor and water carrier competition, the Commission said:

> * * * we are not convinced that any substantial proportion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if the rates found reasonable for interstate traffic are applied thereto. (R. 165.)

The Commission's findings, as pertinent here were:

> While the evidence shows that the existing competition by motor truck is material, and indicates that this means of transportation will be utilized to a greater extent if the intrastate rates are increased, and that therefore, some additional tonnage in all probability will be lost to trucks, or diverted to barge and pipeline movement, the record nevertheless is convincing that the carriers will derive a substantial increase in revenue if the intrastate rates are increased to the interstate basis, and we so find.
>
> We further find that the transportation conditions throughout the Chicago switching district are substantially similar; that they are not more favorable for intrastate movements than for interstate movements between the switching district and Chicago Heights; that the

maintenance of intrastate switching rates and carload minimum weights in Illinois and Indiana between points within the Chicago switching district for 1-line, 2-line, and 3-or-more-line movements, and between that district and Chicago Heights on a lower basis than the corresponding all-commodity rates and minimum weights for 1-line, 2-line, and 3-or-more-line movements, found not unreasonable and approved for interstate transportation in switching service, has not been shown to have caused or to cause any undue preference and advantage of persons or localities in intrastate commerce, or any undue prejudice and disadvantage to persons or localities in interstate commerce, but that the maintenance of such lower intrastate rates results, and will for the future result in unjust discrimination against interstate commerce. (R. 166.)

The order of July 3, 1933 (R. 168a) was thereupon entered.

5. Proceedings in Court below

The bill of complaint to enjoin and set aside the order was filed October 5, 1933, by the Illinois and Indiana Commissions, the Board of Trade of the City of Chicago and the Acme Steel Company. (R. 1.) The United States and a number of railroads were named defendants, and the Commission intervened as a defendant. (R. 438.) The case was submitted to the court upon the pleadings, the reports and orders of the Commission of July 31, 1931, and July 3, 1933, and a certified copy of the testimony and exhibits which were before the Commission

in the latter case. November 3, 1933, the court adopted findings of fact and conclusions of law, which sustained the Commission's order in all respects, denied a permanent injunction and ordered the bill dismissed. (R. 1306.) November 8, 1933, the final decree, dismissing the bill of complaint, was entered. (R. 1316.) In its findings the lower court held that the order was supported by sufficient evidence, was definite and certain, contained adequate findings of fact and was within the power and authority of the Commission. It also adopted as a conclusion of law that there had been no abuse of discretion on the part of the Commission and denied complainants' various motions, including one for reopening and further hearing. (R. 1315.) An application for a stay pending appeal was denied by the lower court. (R. 1331.)

SUMMARY OF ARGUMENT

1. The interstate rates for switching within the Chicago district, as found reasonable in the Commission's first report, as established in the carriers' tariffs, effective December 10, 1931, as reconsidered in the light of changed conditions brought to the Commission's attention at the further hearings, and as reaffirmed in its second report constituted a valid basis of reasonable rates for use by the Commission in reaching its determination that the lower rates for intrastate switching within the district subjected interstate commerce to unjust discrimination. At the first hearing representatives of appellant State Commissions cooperated in the supervisory field

work entailed, as well as in the conduct of the hearings and the oral argument" which cooperation was "of substantial aid in the development of the record." (R. 39.) Appellants were parties to the further hearings. Everything asked of the Commission was done except that it denied motions of appellants asking that it demand of the carriers for submission at the further hearings the preparation of new and additional cost studies particularized by appellants. The Commission could reconsider the rates in light of changed conditions without need for the new cost studies specified by appellants. It did so, and after consideration of all matter brought to its attention, reaffirmed the rates as not unreasonable.

2. The Commission's order requiring that the intrastate switching rates within the Chicago switching district be increased to the level of the interstate rates theretofore prescribed and established, was one for removal of unjust discrimination against interstate commerce in the sense of "preventing the depletion of interstate revenues by discriminating intrastate rates." *New England Divisions Case*, 261 U.S. 184, footnote, page 190. Furthermore, the Commission's action in ordering said State rates to be increased, as well as its theretofore action authorizing the interstate increases, was in performance of the affirmative duty imposed on it by Transportation Act, 1920, "to fix rates and take other important steps to maintain an adequate railway service" for the country. *Wisconsin R.R. Com.* v. *C., B. & Q. R.R.*, 257 U.S. 563, 585; *Florida* v. *United States*, decided April 2, 1934.

3. The Commission's findings in support of its order as one to remove a "revenue burden" discrimination were adequate and complete. The Commission reviewed the evidence of the carriers showing revenue losses in very large amounts resulting from the lower State rates, and set forth the same in its report. Because of competition from other forms of transportation it did not consider that it was a "fair assumption" that the same volume of traffic theretofore moving would continue to move after increase in the State rates, but following review and discussion of the evidence relating to competitive forms of transportation, it said that it was "not convinced that any substantial proportion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if the rates found reasonable for interstate traffic are applied thereto" (R. 165); and it found that while such competition is material and some additional tonnage will in all probability be lost "the record is nevertheless convincing that the carriers will derive a substantial increase in revenue if the intrastate rates are increased to the interstate basis." (R. 166.) In short, the Commission's findings leave no doubt of its conviction that the increased rates would produce such substantial additional revenue. Findings of impracticable exactness are not expected of the Commission.

4. The Commission's findings and order were supported by a very full record. Discrimination was shown not only to result in large losses in revenue, but also to result in wasteful transportation service in that shippers, to avail themselves of the lower in-

trastate rates, routed their shipments over circuitous lines against the flow of the traffic. It was shown that transportation conditions, state and interstate, were substantially the same. Shippers and carriers were practically unanimous in declaring that one basis of rates should apply both interstate and intrastate. The first hearings showed that the traffic was of great importance to the carriers, that carrier competition had resulted in a chaotic rate structure, and that the general revision of rates there undertaken was for the purpose of putting an end to the burdens imposed by this situation. At the second hearing figures were given by important carriers showing for a representative period the differences between revenues actually accruing to them under the intrastate rates, and those that would have accrued if the state rates had been on the interstate basis. Tonnage figures were supplied showing the amount of traffic moving intrastate and interstate during said period.

5. The denial by the Commission of appellants' motions that it demand of the carriers a new and additional cost study was not an abuse of discretion. The weight to be accorded evidence is for the Commission. Nor was there any error in the Commission denying a petition for reopening and further hearing. Evidence as to the alleged changed conditions was in the record, was considered by the Commission, and is fully discussed in its report. The denial by the Commission of a petition, the granting of which would disenable the Commission from performing its important duties, is not an abuse of discretion. *United States* v. *Northern Pac. Ry. Co.*, 288 U.S. 490, 494.

ARGUMENT

I

The basis of interstate rates, established by the carriers pursuant to the Commission's findings following the first hearing and reaffirmed as reasonable at the second hearing, constituted a valid basis of reasonable rates for use in determining that the lower intrastate rates were unjustly discriminatory and burdensome; and the Commission's refusal to demand of the carriers at the second hearing the new and additional cost studies particularized by appellants was not an abuse of discretion invalidating its determination and order

Where, in determining whether the State rates of interstate carriers subject interstate commerce to unjust discrimination or "revenue burden", the interstate rates of the carriers are used as the measure, it is of course true that such measure must be that of reasonable rates. *Georgia Comm.* v. *United States*, 283 U.S. 765. In the present case the Commission, following the first hearings, prescribed the interstate rates as reasonable, and they were established by the carriers December 10, 1931, and have since been applied on interstate switching within the district. Following refusal of the State Commissions to allow increase to the same level of the rates on intrastate switching the carriers asked the Interstate Commission to order that the increase be made on the record as it stood. In line with its procedure in the *Georgia Commission Case*, *supra*, however, the Commission denied that application and reopened the case for further hearing on the question of unjust discrimination caused by the lower basis of the intrastate

switching rates within the district. Thereupon appellant State Commissions and shippers filed motions for a new cost study on all 35 railroads on grounds, in substance, that the old study as made with respect to the 15 roads was not representative, that it was defective in other enumerated particulars, and that conditions had changed since it was made. These motions were denied. Thirteen days after the interstate switching rates had been established by the carriers pursuant to the Commission's finding and order, appellants Acme Steel Company and 57 other shippers, filed with the Commission complaint against those interstate switching rates. This was heard separately from the main case but upon stipulation that pertinent evidence in the one case could be considered in the other and the two cases were dealt with in the one report. The question of the reasonableness of the interstate rates, although recently passed upon, was again considered with the utmost care and the prior findings reaffirmed.

The above being the circumstances under which the interstate rates were established and were reaffirmed as reasonable as they stood established in the carriers' tariffs, the question is as to their status as a valid basis or measure for use by the Commission in reaching its determination that the lower basis of intrastate rates was unjustly discriminatory and unduly burdensome upon the carriers' revenues and interstate commerce. In the Commission's second report involved in the *Georgia Commission Case, supra,*

(160 I.C.C. 309), in answer to the contention that it should have been reopened as to the reasonableness of interstate rates as well as to the issue of unjust discrimination caused by the lower State rates, it was said at page 313:

> As heretofore stated, the 17,517 scales were recently prescribed in these proceedings for interstate application after an exhaustive investigation and are now applied on interstate traffic throughout the greater part of southern territory. The only reason that no findings were made for the future or order entered in the original proceedings concerning the Georgia intrastate rates was because this commission, desirous of fostering and encouraging the spirit of cooperation between it and the State commissions, "felt that the Georgia commission will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment herein approved." The Georgia commission has authorized a revision. Respondents and others complained and are here contending that this intrastate revision is so out of harmony with the approved interstate revision that it has brought about an unlawful relationship. For the purpose of determining whether or not this is the fact, the proceedings were reopened and the further hearing had. The scope of the further hearing was properly limited to the question indicated. If the contention made on behalf of the Georgia Commission in this regard were sound, then our efforts to secure cooperative action in

situations such as here presented instead of bringing about that result, could be made the instrument of burdening this commission with endless investigations covering the same subject matter and would result in litigation being prolonged indefinitely. The contention is without merit.

In disposing of this same contention, the Supreme Court in the *Georgia Commission Case, supra,* said at pages 769–770:

> * * The claim is that there was no "full hearing" before entry of the challenged order, because the Commission limited the supplemental hearing to the question of prejudice and discrimination, and refused to consider anew the question of the reasonableness of the interstate scales. It is true that when state rates are assailed on the ground that they result in undue prejudice to interstate shippers or discriminate against interstate commerce, the Commission must determine whether the existing interstate rates are reasonable, as it may not require intrastate rates to be raised above a reasonable level. *State Corporation Comm.* v. *Aberdeen & Rockfish R. Co.*, 136 I.C.C. 173, 180. But the reasonableness of the interstate rates had already been found when they were established in the earlier stage of the proceedings; and at those hearings the Georgia Commission and the Highway Board were represented. Nearly eighteen months had elapsed since the original order, but no evidence was offered at the supplemental hearing to show that conditions had so changed since the interstate

rates were prescribed as to require reconsideration of the issue. The appellant's objection to the procedure is unfounded.

In the present case the Commission did more than in the *Georgia Case* in that it reviewed and reaffirmed the reasonableness of the interstate rates. Appellants contend, however (Br. 72–82), that the Commission's denial of their motion for a new cost study was an abuse of discretion, asserting that the 15 roads used were not representative, that the study was defective in other respects, and that conditions had changed since it was made. It will be noted that the abuse of discretion with which the Commission is charged, is not that it denied hearing as to the effect of changed conditions on the reasonableness of the rates (Compare *A. T. & S. F. Ry.* v. *U.S.* (*The Grain Case*), 284 U.S. 248), but is that it denied motions asking that those changed conditions be tested in the manner insisted upon by appellants, namely, by a new cost study made with respect to "each and every" of the 35 railroads within the district and in other particulars as specified by appellants. (B. 73.)

Giving consideration first to appellants' contention that the 15 roads used in the cost study were not representative of conditions generally, their motion made to the Commission (shown as an appendix to Appellants' Brief, pages 183–199) states, at pages 186–187, that the Commission, in requesting the carriers to make the study, specifically directed that the car movements should be representiatve of the

traffic and, in order that the expense should not be prohibitive suggested the selection of yards of a limited number of carriers in which are performed car movements which are representative of those to which the rates apply; that, in response thereto, the carriers selected 8 roads (named in the motion); that after further conferences the Commission gave notice that the 8 roads were not sufficiently representative of the entire movement and a further study was made by 7 other roads (named in the motion) all of which were embraced in a list which the shippers had insisted were necessary to add to the original 8 roads in order that the study be representative; that in addition to the seven which were added the shippers had requested the inclusion of the Chicago River & Indiana (including the Chicago Junction); that this request was presented by the Commission to the carriers but the latter declined to include any movements of the Chicago Junction; and that at the hearings the carriers were advised by the Commission that the responsibility for a representative cost study rested with them and that they assumed the risk of not having such representative study.

From the Commission's two reports it is plain that the carriers lived up to the responsibility of selecting representative study roads and that they were accepted as such by the Commission. And, so far as appears from said motion appellants' only objection to the "make-up" of the study roads (except that all 35 were not included) resolves itself into the criticism that, while the carriers did add to the 8 study roads

first selected, 7 others requested by appellants, they refused to add also the Chicago Junction. This criticism of exclusion of the Chicago Junction plus the one further criticism of the inclusion of the Elgin, Joliet & Eastern is all, too, that appears from the Commission's reports as objections urged by appellants against the make-up of the study roads. Earlier in this brief we referred to the statement in the Commission's first report that "the record does not indicate that the inclusion of the E. J. & E. has inflated the unit costs, and in fact one of the exhibits filed by the shippers (Ex. 13) indicates that the engine-hour costs are lower with that carrier included than if it is excluded." (R. 54.) As to the exclusion from the cost study of the Chicago Junction the Commission said in its second report that this was "due to the volume of 1-line short-haul undiversified traffic handled between packing houses on its line. Its movements range from 200 feet to a mile. It is obvious that those movements are not representative of the intradistrict hauls performed within the district." (R. 158–159).[4]

In short, there was no merit to appellants' sole criticisms of the study roads as constituted. The rejection of the Chicago Junction was approved by the Commission on grounds which, on the face of things, were sound. Inclusion of the E. J. & E. did not inflate the costs but had the contrary effect. As for appellants' assertion that, in order to be repre-

[4] The Commission's first report found also that the Chicago Junction had no place in the cost study. (R. 61.)

sentative, the study had to be conducted by each and every one of the roads in the district, the Commission from the beginning was not of that view.

It should be kept in mind that appellants' motion was not simply for reopening to test the reasonableness of the rates in light of changed conditions, but was for the Commission to demand of the carriers a new cost study to be made on all 35 roads and in a particular manner (Appellants' Br., 198). The charge against the Commission of abuse of discretion is because of its refusal to make that demand.

The complaint of Acme Steel Company and 57 other shippers against the interstate rates, disposed of as aforesaid with the main case, enabled the Commission to further consider the interstate rates. New and detailed cost studies were not necessary in order to reconsider the reasonableness of the rates prescribed in the first report, and this is perhaps best shown by the changed conditions urged by appellants at the second hearing. The Commission's second report reads (R. 143):

> Some of the changed conditions enumerated since the prior record was closed are (1) falling off in volume of traffic, (2) improvement of the highways in the district resulting in the diversion of much additional tonnage from the rail lines for movement by truck, (3) the decline in value of many of the articles or commodities transported, (4) reduction in wages and cost of supplies, and (5) curtailment in the amount of service rendered by the carriers to the industries within the district.

These matters could be considered in connection with the record already made without need for new and detailed cost studies. And the Commission's second report shows that such new conditions were considered and weighed. The record disclosed that some of the commodity prices were on a lower level and that there had been a falling off in tonnage. The conditions with respect to truck competition were fully discussed and will be referred to later in this brief.

The carriers contended that the principal change in conditions was the decrease in volume of traffic due to the general business depression; that such decrease in tonnage had increased their unit cost because not accompanied by a corresponding or proportionate decrease in operating expenses. In support of this they introduced exhibits [5] from which the Commission compiled a table, set forth in its second report (R. 146), which showed increases in items of unit cost of handling cars for the 8 switching roads included in the cost study. Among other things, the total per-car cost is shown to have increased from $3.86 in 1928 to $4.04 in 1931. The operating ratio of 66.97 percent in 1928 is contrasted with that of 74.11 percent in 1931. The carriers' exhibits further show that total operating revenues for the same switching roads, but including the Chicago River & Indiana Railroad, were for the year 1931 about $10,500,000 less than for the year 1928, whereas total operating expenses of 1931 were only $5,500,000 less than in 1928. The trunk

[5] R. 949–950; Exhibits 107, 108, 109.

lines used in the cost study introduced similar evidence, although not segregated as in the case of the switching lines. Their figures showed, among other things, that their operating ratio had increased from 73.8 percent in 1928 to 78.45 percent in 1931. (R. 950.)

The purpose of these exhibits was to demonstrate, as aforesaid, that the decrease in volume of traffic unaccompanied by a proportionate decrease in operating expenses had caused unit costs to increase rather than to diminish. (R. 145.) In short, new cost studies would have shown higher unit costs.

The shippers contended that switching rates in various other switching districts were on a lower basis. In this connection it is important to keep in mind that everything entering into switching rates is a matter of averages; so that the rates of a district whose area, average hauls, average costs are a quarter, or less, of those of the Chicago district are in no way comparable to the rates of the latter. Concerning the districts mentioned, the Commission said:

> Certainly not any of the compared districts approach the magnitude of the Chicago district, which is approximately 40 miles in length and from 7 to 15 miles wide, comprising over 600 square miles. This area contrasted, for example, with the Pittsburgh switching district in which the maximum haul does not exceed 10 miles, may not fairly be said to be a comparable district. Nor is any reference made to the relative property values per mile of road in Chicago as contrasted, for

example, with the Toledo, Erie, and other switching districts referred to.

In brief, the Chicago district is unique, and insofar as rate comparisons in substantiation of the cost study are concerned, the Commission was necessarily right in looking not to the rates of other districts but to line-haul rates. Officials of the different carriers in charge of switching movements in Chicago testified that the operation of switching trains is comparable to road-haul operation; that the business is handled in regular transfer trains consisting of cars for both interstate and intrastate movements, operated under full crews with the air coupled up and supplied with cabooses and both road-haul and switching business is handled in the same trains. (R. 148.)[6]

Similarly as in its first report the Commission, in its second report, compared the switching rates with distance scales on low grade commodities. In *Iron & Steel Articles*, 155 I.C.C. 517 (official territory) the rate for the 15 to 20 mile block, the average haul within the district, is 5.25 cents. In *Atlas Cement Co. v. C. B. & Q. R.R.*, 81 I.C.C. 1, the rate on cement for 20 miles is 7 cents. The fifth class rate in the eastern class rate revision is 11 cents for 5 miles and 12 cents for 20 miles and the sixth class rate is 8 cents for 5 miles and 9 cents for 20 miles. (R. 98–100.) These scales and others on low grade commodities are referred to in the testimony.[7] Naturally they were not

[6] Witness Shreve R. 956–965; Jacoby R. 965; Barlow R. 986; Meyers R. 996; Whiting R. 1001.

[7] Witness Bond R. 1162–1164; 1167; 1169–1170.

used by the Commission to fix the switching rates with precision, but they are convincing as showing that the rates of 3, 3.5 and 4 cents for 1-line, 2-line, and 3-or-more line hauls, which were proposed after conferences between carriers and shippers (See first report, R. 37), which were shown warranted by the cost study and which were found reasonable in the Commission's first report and thereafter established in the tariffs, are well within the bounds of reasonable maximum rates.

Said interstate rates are not under direct attack in this suit, which is one for the setting aside of an order requiring the intrastate rates to be raised to the interstate level. As aforesaid, the issue with respect to the interstate rates is as to their validity as a basis for use by the Commission in reaching its determination that the lower intrastate rates unjustly discriminated against interstate commerce. Having been prescribed by the Commission, said interstate rates stood established in the carriers' tariffs as reasonable rates which the Commission might have used for such purpose without need for reconsideration and reaffirmance of their reasonableness. *Alabama* v. *U.S.*, 283 U.S. 776; *U.S.* v. *Louisiana*, 78 L.Ed. 50; *Georgia Comm.* v. *U.S.*, 283 U.S. 765. In the cases just named the Commission's first order operated only upon the interstate rates, and in none of them was there reopening as to the interstate rates when subsequently the Commission was called upon to take specific action with respect to the State rates. In the *Georgia Case*, it was urged that the fact that the case

was not reopened as to the reasonableness of the interstate level, to which the State rates were required to be raised, denied the appellant the right of full hearing, but this Court pointed out that before ever the interstate rates had been established in the carriers' tariffs there had been full hearing as to their reasonableness in which the appellants had participated and that no evidence was offered at the supplemental hearing to show that conditions had so changed as to require reconsideration of that issue.

In the present case the interstate rates were similarly established in the carriers' tariffs as reasonable rates. In addition, they were reconsidered in light of changed conditions brought to the Commission's attention, and were reaffirmed. Everything asked of the Commission by appellants was done except the one thing that it demand of the carriers the preparation and submission of the new and detailed cost studies. It is submitted that the Commission's refusal to do this, not only was not an abuse of its discretion, but was the only reasonable ruling in the premises, fully confirmed as such by the cost data and other evidence which was produced at the further hearings.

II

The Commission's order requiring that the State rates of interstate railroads within the switching district be increased to correspond with increases, established in their interstate rates was entered "to prevent the depletion of revenues of carriers subject to the Interstate Commerce Act" and in performance of the affirmative duty imposed on the Commission by Transportation Act, 1920, "To Fix Rates and Take Other Important Steps to Maintain an Adequate Railway Service"

The Act to Regulate Commerce, 1887, was designed principally to put an end to discrimination in railroad rates and service as between shippers and to prevent the charging of excessive rates. Its only provisions prior to 1920 "that enured to the benefit of the carriers were the requirements that rates should be reasonable in the sense of furnishing adequate compensation for the particular service rendered and abolition of rebates." *Wisconsin R.R. Comm.* v. *C. B. & Q. R.R.*, 257 U.S. 563, 585. Transportation Act, 1920, introduced the new policy of promoting, through regulatory legislation, an adequate and efficient transportation service for the country. The provisions of said Act, and the relation of each to this great purpose, have been frequently discussed and explained in decisions of this court. "The most novel and most important feature" of the 1920 Act was section 15a requiring the Commission so to prescribe rates as to enable the carriers to earn a net railway operating income equal to a fair return on the value of railway property used in transportation. (Idem. 584.) This provision, and others in the 1920

Act, "imposed an affirmative duty on the * * * Commission to fix rates and take other important steps to maintain an adequate railway service for the people of the United States." [8] (Idem. 585.) The new Act aimed "to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden." *Dayton-Goose Creek Ry.* v. *U.S.*, 263 U.S. 456, 478. "The credit of the carriers, as a whole, had been seriously impaired. To preserve for the nation substantially the whole transportation system was deemed important. By many railroads funds were needed, not only for improvement and expansion of facilities, but for adequate maintenance. On some, continued operation would be impossible, unless additional revenues were procured." *New England Divisions Case*, 261 U.S. 189.

In addition to section 15a, other noteworthy provisions for the preserving of carrier revenue in the interest of an efficient transportation service were those empowering the Commission "to permit pooling of traffic and earnings; to fix minimum, as well as maximum rates; and thus prevent cut-throat competition and the taking away of traffic from weaker competitors; *to prevent the depletion of interstate*

[8] This affirmative duty has not been changed by amendment made in section 15a by Emergency Transportation Act 1920 (48 Stat. 211). "On the contrary, the substituted rule of rate making by its express terms emphasizes the carriers' need of adequate revenues." *State of Florida et al.* v. *United States et al.*, decided by this Court April 2, 1933.

revenues by discriminating intrastate rates * * *." *New England Divisions Case*, 261 U.S. 184, footnote, page 190. (Italics ours.)

The provision last referred to (Section 13 (3) and (4)) is the one directly involved in this case. It provides in part (Text in Appendix) that:

> Whenever * * * the Commission, after full hearing, finds that any such rate, fare, * * * or practice (imposed by State authority) causes any undue * * * preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, *or any * * * unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful*, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such * * * discrimination * * *.

Prior to the enactment of the above the Commission, acting under section 3, had in several cases found that State rates unduly preferred state shippers to the prejudice of interstate shippers, and had entered cease and desist orders. *Shreveport Case*, 234 U.S. 342. But there was then no prohibition in the Act against "unjust discrimination against interstate commerce" in the sense of State rates that fail to bear their just share of the burden of maintaining the carriers' revenues and the national transportation system. And

there was then no power in the Commission to act directly on the State rates by prescribing the rates to remove the discrimination.

Following Transportation Act, 1920, which, among other things, terminated federal control, the carriers applied to the Commission for authority to make general increases in all rates and fares. In its decision on the application, *Increased Rates, 1920*, 58 I.C.C. 220, 246, the Commission authorized substantial increases in freight rates and passenger fares. Some of the State rate regulating bodies denied applications of the carriers for authority to make like increases, whereupon the carriers invoked the Commission's jurisdiction under section 13 (4), above quoted. Several of the Commission's orders, entered in the proceedings which followed, were attacked in the courts and in each case which reached this Court, the Commission's order was upheld. *Wisconsin R.R. Comm. Case, supra; New York* v. *United States*, 257 U.S. 591; *N. C. & St. L. Ry.* v. *Tennessee*, 262 U.S. 318; *North Dakota* v. *C. & N. W. Ry.*, 257 U.S. 485.

Recent decisions of this Court have continued to emphasize the necessity that intrastate traffic contributes its just share toward the cost of maintaining the national transportation system.

In *Florida* v. *United States*, 282 U.S. 194, it was said at page 211:

> * * * As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the act requires that intrastate

> traffic should pay "a fair proportionate share" of the cost of maintenance. * * *

In *Louisiana Comm.* v. *Tex. & N. O. R.R. et al.*, 284 U.S. 125, this Court said at page 131:

> * * * and it (Congress) has empowered the Interstate Commerce Commission * * * to require the carriers to make and apply on intrastate traffic such reasonable charges as will produce its fair share of the amounts needed to pay operating expenses, provide an adequate railway system and yield a reasonable rate of return on the value of the property used in the transportation service.

In *Florida* v. *United States*, decided April 2, 1934, this Court, speaking of the 1933 amendment to section 15a (48 Stat. 211), said:

> Neither the elimination of the group method of rate making, nor the substituted rule, suggests an intention to impair the Commission's authority over intrastate rates for the appropriate protection of interstate commerce. * * * The new Act discloses no intention to weaken national control for essential national purposes over the railway system of the country. It was rather designed to aid that control in the light of the depressed economic condition of the railways. We conclude that the new rule of rate making left the power of the Commission under Section 13 (4) intact.

III

The Commission's findings in support of the order as one to remove unjust discrimination against interstate commerce were adequate

It has been shown earlier in this brief that the rates for interstate switching within the Chicago switching district, as found reasonable in the Commission's first report, as established in the carriers' tariffs, effective December 10, 1931, as reconsidered in the light changed conditions brought to the Commission's attention at the further hearings and as reaffirmed in the second report, constituted a valid basis of reasonable rates for use by the Commission in reaching its determination that the lower rates for intrastate switching within the district subjected interstate commerce to unjust discrimination.

In the consideration of this case, there must always be in mind the fact that the Chicago switching district is essentially a unit so far as switching movements are concerned. Intrastate and interstate traffic are commingled in the switching movements and handled indiscriminately.

In its first report the Commission recited the rate history of the Chicago district showing that the Lowrey basis of rates had been adopted by concerted action of shippers and carriers, that it was a natural development in the interest of all concerned, and that shippers and carriers were practically unanimous in their desire for a uniform basis, the question of the level of the rate basis being the matter for adjustment. In its second report, the Commission, in

addition to reaffirming the reasonableness of the rates prescribed in its first report, dealt specifically with the unjust discrimination caused by the lower basis of intrastate rates; such discrimination being concretely shown by reason of the fact that the latter rates were continued at the lower basis for a considerable period after the interstate rates had been raised.

Although, at the time of its first report, the Commission issued no order with respect to the intrastate rates, it expressed the hope that the State Commissions would allow adjustment of the State rates in harmony with the conclusions in the report. At page 711, it said:

> A large percentage of the traffic under consideration is intrastate in character, but the record does not disclose any difference in the conditions surrounding the handling of the interstate and intrastate movements. In the hope that both the Illinois Commerce Commission and the Public Service Commission of Indiana will bring their rates in harmony with the conclusions herein, no specific finding or order with regard to intrastate rates will be entered at this time. (R. 75.)

In its second report, after stating at length facts of record evidencing discrimination caused by the failure of the two State commissions to permit establishment of the rates found reasonable for interstate movements, the Commission set forth its finding of discrimination as follows:

> We further find that the transportation conditions throughout the Chicago switching

> district are substantially similar; that they are not more favorable for intrastate movements than for interstate movements between the switching district and Chicago Heights; that the maintenance of intrastate switching rates and carload minimum weights in Illinois and Indiana between points within the Chicago switching district for 1-line, 2-line, and 3-or-more-line movements, and between that district and Chicago Heights on a lower basis than the corresponding all-commodity rates and minimum weights for 1-line, 2-line, and 3-or-more-line movements, found not unreasonable and approved for interstate transportation in switching service, has not been shown to have caused or to cause any undue preference and advantage of persons or localities in interstate commerce, or any undue prejudice and disadvantage to persons or localities in interstate commerce, but that the maintenance of such lower intrastate rates results, and will for the future result in unjust discrimination against interstate commerce. (R. 166.)

Appellants cite *Florida* v. *United States*, 282 U.S. 194, to support their contention that the report in the instant case lacks the findings necessary to support the order as one to remove a revenue burden. But the findings which were absent in the *Florida Case* are present in this case. At page 116 the Commission's second report reads:

> The carriers show a constructive annual loss in revenue resulting from the lower intrastate rates required to be maintained under the

orders of the Illinois and Indiana State Commissions. This loss is measured by the difference between the revenue which would have accrued on the intrastate traffic of September 1926 under interstate rates as increased December 10, 1931, and the prevailing intrastate rates. The traffic moving in September 1926 is used as representative because it was the basis for the cost data presented in the original case. The estimated annual difference in revenue within Illinois amounts to $2,683,981, within Indiana $94,244, and between the Chicago switching district and Chicago Heights $86,732, a total of $2, 864, 957, which the carriers contend is the amount by which interstate commerce would be unduly burdened under normal business conditions. Studies also were made of the difference in revenue between the interstate and intrastate rates based on the traffic moving during the weeks of November 9 to 15, 1931, and January 11 to 17, 1932. These two weeks represent periods prior and subsequent to the December 10, 1931, interstate increases. Based on the intrastate switching traffic moving within the district for the week of November 9 to 15 there is shown a difference in revenue of $11,731 per week, or an estimated annual loss of $1,011,369; on the basis of the traffic for January 11 to 17 the difference would amount to $9,556 per week, or an estimated annual loss of $985,181. Based on the traffic which moved intrastate between the district and Chicago Heights for the week of November 9 to 15 the difference in revenue would amount

> to $535, or an estimated annual loss of $46,152; and for the period January 11 to 17 there is shown a loss of $562, or a net annual loss of $57,979. These constructive differences amount annually to $1,057,521 based on the traffic handled during the week of November 9 to 15, and to $1,043,160 based on the traffic moving during the period January 11 to 17. (R. 164.)

Summing up the above it will be seen that as based on traffic conditions of 1926, that is, prior to the business depression and asserted as representing normal conditions, the loss is shown as $2,864,957 annually. The other estimates, based on traffic representative of 1931 and 1932 conditions, show a constructive annual loss of $1,057,521.

After setting forth the carriers' estimated losses, the report states that in those estimates the carriers relied on the assumption that all the traffic would continue to move at the higher rates, which was not a fair assumption. (R. 165.) In this connection the Commission pointed out that while the major part of the tonnage decrease since 1926 had been due to business depression, a part was due to diversion to motor trucks. The report then reads:

> * * * Within the Chicago switching district there are many improved highways and also certain navigable waterways which handle a substantial volume of tonnage that otherwise would move by rail. The witnesses for certain industries testified that any increases in the present intrastate rates on

> their commodities, which included pig iron, paving and roofing tar, sulphuric acid and other chemicals, crushed stone, and others, would divert the tonnage to motor trucks, pipe lines, or barges. However, having in mind that the average single-line intrastate haul in Illinois is nearly 15 miles and in Indiana 6.3 miles; that highway traffic conditions in the Chicago district are congested, involving material delays in the movements of trucks; that the differences between the intrastate and interstate rates at present are generally for single-line hauls only $1.50, and $3 after expiration of the emergency increases; and also that a very large proportion of the intrastate traffic is handled in 1-line movements, we are not convinced that any substantial proportion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if the rates found reasonable for interstate traffic are applied thereto. (R. 165.)

The report thereafter quotes that part of this Court's decision in the *Florida Case* where, among other things, it is said that the raising of rates may not increase revenues because discouraging patronage, and that the Commission should have made findings "as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden." Directly

following this the report makes the express finding that—

> While the evidence shows that the existing competition by motor truck is material, and indicates that this means of transportation will be utilized to a greater extent if the intrastate rates are increased, and that therefore, some additional tonnage in all probability will be lost to trucks, or diverted to barge and pipeline movement, the record nevertheless is convincing that the carriers will derive a substantial increase in revenue if the intrastate rates are increased to the interstate basis, and we so find. (R. 166.)

Following the above the Commission made its formal finding of unjust discrimination against interstate commerce, which finding is set forth in full earlier in this chapter.

It will be seen that, while the Commission was unable to give full effect to revenue losses claimed by the carriers, neither was it "convinced that any substantial proportion will be diverted to other forms of transportation if the rates found reasonable for interstate traffic are applied to intrastate traffic." Giving full consideration to appellants' evidence of competitive conditions the Commission, nevertheless, believed that the carriers would derive a substantial increase in revenue from the increased rates; and it so found.

It is not expected of the Commission that it make findings of impracticable exactness. Reasonable determinations depending upon the circumstances of

the case are all that are required. *Florida* v. *United States, supra*. *Florida* v. *United States*, decided April 2, 1934; *Louisiana* v. *United States*, 284 U.S. 125; *Wisconsin R.R. Com.* v. *C. B. & Q. R. Co.*, 257 U.S. 563; *Georgia* v. *U.S.* 283 U.S. 765; *Alabama* v. *U.S.* 776.

IV

There was abundant evidence in support of the Commission's finding of unjust discrimination

The conditions which made necessary the adoption generally throughout the Chicago switching district of a switching basis of rates developed naturally and, since the district is one homogeneous whole, may be said to obtain with respect to all intradistrict switching whether or not the particular movement crosses the Indiana-Illinois State line. The Commission's first report points out that the district is larger than any other switching district in the country and is densely populated; that 35 railroads operate within it which maintain a network of over 5,000 miles of track, serving over 4,000 private industries (R. 39, 40); and that the chaotic condition prior to 1911, due to lack of uniformity of rates and practices, gave rise to a concerted effort by shippers and carriers to secure uniformity, which resulted in the adoption generally throughout the district of the Lowrey tariff of uniform rates applying, with some exceptions, on all commodities and irrespective of distances. (R. 40.) In Appendix C to the first report (R. 78–82) there is set forth an analysis of tonnage moving on the Lowrey basis and on exceptions to that basis, divided as to 1;

2 and 3-or-more-line hauls, and as between interstate and intrastate movements. The report also contains discussion (R. 56–70) with respect to particular commodities showing the extent of the movement interstate and intrastate and the physical, commercial and competitive circumstances under which the several commodities are moved. Keeping in mind that the interests of shippers and carriers in the maintaining of a switching (or group) basis of rates obtains throughout the whole district and irrespective of the State line, it will be understood that all the evidence discussed in the first report bears, not only on the reasonableness of the interstate rates prescribed, but also on the discriminatory and burdensome effect of maintaining a lower basis on switching movements not crossing the State line. The Commission's first report contains ample facts to support the conclusion there stated (R. 78) that "the record does not disclose any difference in the conditions surrounding the handling of the interstate and intrastate movements."

The second report contains (R. 156–166) a recital of specific facts relating to unjust discrimination, which facts are concrete because based on the actual effect of maintaining lower rates for intrastate than interstate switching movements within the district. It is there shown that the intrastate traffic (with exceptions, R. 157) moves on the so-called Lowrey basis, the same rate and minimum weight applying to each commodity irrespective of difference in the length of haul; that the evidence disclosed that the traffic, both interstate and intrastate, is handled in

the same train, by the same crews and in the same manner (R. 156–157); that many of the railroads cannot move traffic from an industry on the Indiana side to an Indiana destination without crossing the State line, and, likewise, must cross the State line in a movement from Illinois industries to destinations in that State; that some of the activities are located on both sides of the State line, and that some of the assembling yards and interchange tracks overlap State lines (R. 159); that while many industries can ship to points within its boundaries over only interstate routes and must, therefore, pay the higher interstate rates, many other industries have intrastate routes to which they resort to obtain the lower rates, although they are so-called unnatural routes against the flow of the traffic and therefore entailing additional expense in the handling. (R. 160.)

Appellants contend (Br. 36–39) that in view of the differences in the average lengths of haul between intrastate and interstate movements, the average costs of all traffic are not representative of the costs of intrastate traffic and hence it cannot be said that the lower intrastate rates for the shorter distances discriminate against interstate traffic. Answering the same contention the Commission said (R. 163–164):

> Switching charges differ from line-haul rates in that they are ordinarily not graded in accordance with either the value of the commodity moved or the distance of movement. As a rule they apply to any haul within the switching district no matter how long or how short it may be, subject to the qualification

> that a haul to or from a connecting line may take a lower charge than a haul complete in itself. *Boston Wool Trade Asso.* v. *Director General*, 69 I.C.C. 282, 294. Switching charges are largely based on average conditions.
>
> * * * * *
>
> Furthermore the intrastate hauls within the district range from a fraction of a mile to 54 miles, and there are interstate hauls also which range from a fraction of a mile to 68 miles, with one haul shown of approximately 89 miles. It thus follows that there are many individual interstate hauls which are longer than many of the interstate hauls. From the outset, as previously stated, the interested parties, with few exceptions, favored an all-commodity basis, and practically all parties were of one accord that one level of rates should apply throughout the district on both interstate and intrastate movements, but coupled generally with the proviso that the level of the rates should not exceed the intrastate basis.

In short, appellants' contentions based on differences in length of haul in effect repudiates what has been obtained by concerted action of shippers and carriers over a long period of years, namely, the all-commodity basis of rates applying generally for all distances throughout the district; and, if given effect, would bring about a reversal of the method pursued by railroads and rate-regulating bodies for many years in fixing switching rates in congested districts. In view of the testimony of record and repeated statements in the Commission's reports it is plain that

shippers generally, and whether in their capacity as interstate or intrastate shippers, do not want to discard the switching (or group) basis of rates, although preferring that that basis be fixed at the intrastate rather than the interstate level. But that is beyond the scope of this suit which involves only the intrastate order. The Lowrey basis of rates has been in the interest of both shippers and carriers and Chicago has benefited thereby,[9] industries being attracted to the district because the element of distance was eliminated from the switching charges and thus competitive industries were on an equality, so far as switching rates were concerned, regardless of their location within the switching district. Treating an area as a unit and applying uniform rates thereto is no new thing in rate making—"blanket territory" and "group rates" are common expressions, well known to this Court. *St. Louis S. W. Ry. Co.* v. *United States*, 245 *U.S.* 136, 138, and note 1, 141 and note 1; *United States* v. *Illinois Cent. R.R.*, 263 U.S. 515, 518, note 1; *Virginian Ry.* v. *United States*, 272 U.S. 658, 660, 664.

Many witnesses testified to the desirability of the all commodity basis of rates for all distances.[10] Railroad officials testified that distance did not "cut much figure" in the switching district and is not important in determining cost. (R. 977; 989; 992.) Classifica-

[9] Witness Beyers R. 767–774; Haynes R. 535.

[10] Witness Haynes, R. 535; Forrest, R. 565; Warner, R. 617; Shank, R. 653, 849; Newman, R. 655; Robert, R. 659; Adams, R. 709; Beyers, R. 768; 774; Galligan, R. 794, 799.

tion in the terminals or interchange yards enters more importantly into the costs (R. 1000; 996–997; 1174–1177). They also testified that the traffic, both interstate and intrastate, is handled in the same trains and in the same manner (R. 956–957; 965; 986; 996). The extent of the burden on the carriers' revenues resulting from the lower intrastate rates was set forth in the preceding chapter. It is shown in Exhibits Nos. 99A, 101A, 102A, 103A and 105A, which were introduced by the carriers. (R. 944–947, 1007 et seq.) Railroad officials also testified that shippers having available to them lower-rated intrastate routes made use of them in so-called unnatural movements against the flow of the traffic. (R. 964; 965–973; 1000–1002.) This is also brought out in exhibit 110, which shows that between December, 1931 to March 1932, 856 cars were moved over such routes which would have formerly moved over interstate routes. The increase in intrastate movements following the increase in interstate rates is also shown in table at page 114 of the second report (R. 114) and by Exhibit 105A.

V

Denial of appellants' motion for rehearing was not an abuse of discretion

Appellants assert that the Commission abused its discretion in refusing to reopen the proceedings and to set the case for further hearing as requested in their joint motion (R. 169), and because of that the order is void.

Most of the matters presented in support of the motion had been before the Commission on the record made in the hearings, and had been urged in oral argument and in briefs submitted. For example, it is urged that the order should be vacated and the proceedings reopened because of "changed conditions" since the record was closed. (R. 180.) The alleged changed conditions were that competition between the rail carriers and carriers engaged in transportation by truck, water or pipe line had greatly increased since the record had closed, May 10, 1932. But the matter of competitive conditions had been considered by the Commission in its second report, as has already been shown. The motion for reopening and rehearing merely asserts a greater degree of competition. Compare *United States* v. *Northern Pac. Ry.*, 288 U.S. 490, 494.

It was also urged that the order was void because new cost studies had not been required of the carriers. This same contention was made in appellants' motion asking the Commission to require the carriers to make such new studies for the second hearings, and has been fully considered in Chapter I of this brief.

VI

The order is not indefinite

Appellants contend (Br. 105) that the Commission's order is indefinite in its operation upon carriers which "have no rails in the district" except in the Illinois part thereof. In this connection they men-

tion that the Commission's first order prescribed interstate rates of 3 cents for one-line hauls, 3.5 cents for two-line hauls and 4 cents for three-or-more line hauls, and that its second order required the carriers to establish intrastate rates not less than the rates contemporaneously applied by them in interstate switching service. The point which appellants seek to make is that, since a one-line haul is a haul of a single carrier, an interstate one-line haul in intra-district switching is a haul of a single carrier over its own rails across the Illinois-Indiana State line. From this they argue that the requirement of the Commission's order for the increasing of one-line intrastate rates to the one-line interstate level is indefinite, in that those carriers whose hauls over their own rails (one-line hauls) do not cross the State line do not have in their own tariffs the one-line interstate rate of 3 cents which the Commission's second order prescribes also as the level for one-line intrastate rates.

On the face of the order the requirement for increase in intrastate one-line rates plainly is not limited to the carriers which operate with their own rails across the Illinois-Indiana State line. Moreover, an order of the Commission must be read together with the report of which it is a part. *Georgia Comm.* v. *United States, supra*, p. 771; *American Express Co.* v. *Caldwell*, 244 U.S. 617, 627. And when the present order is so read there is no conceivable room for dispute as to its requirements for increase intrastate for one-line,

two-line, and three-or-more line hauls to the interstate level of 3 cents, 3.5 cents, and 4 cents, respectively. This is so plain from the whole report that it is shown at its beginning in the statement of the issues, namely, the increases proposed intrastate, by practically all discussion of evidence bearing on the proposed increases and by the reports' findings and conclusions.

In connection with their contention that the order is indefinite in its application to carriers which do not, with their own rails, operate across the Illinois-Indiana State line, appellants refer to *Texas & Pacific Ry.* v. *U.S.*, 289 U.S. 627, wherein it was held that, in order to constitute discrimination within the purview of section 3 of the Act, there must be a common control and responsibility for both the prejudicial and preferential rates. Appellants' contention, as based on this case, is best shown by the statement in their brief which reads as follows (p. 107):

> The observance of the principle of law enunciated in that decision presumably explains the indefiniteness of the order complained of. The Commission was well aware that, in requiring the removal of unjust discrimination, it could not enter a valid order unless the carrier which maintained and charged the rate found to be unjustly discriminatory against interstate commerce likewise maintained and charged the rate alleged to unjustly discriminate in favor of intrastate commerce.

> The Commission consequently took care to enter an order which in form does not contravene the principle enunciated in the *Texas & Pacific Case*.

But the rule of the *Texas & Pacific Case* that there must be common control and responsibility for both the prejudicial and preferential rates in a case under section 3 has no application in a case under section 13 (4) where the Interstate Commission has adjudicated the reasonable level of interstate rates and the carriers are only nominal defendants since they are petitioning for an order prescribing the same rates for intrastate service. In such case the real source of responsibility for the preference and discrimination is not in any carrier or carriers but in the State. And the Interstate Commission is expressly authorized to prescribe the State rates which will remove such character of preference and discrimination.

Particularly in a case such as this of unjust discrimination against interstate commerce growing out of revenue losses from low and burdensome intrastate rates the section 3 principle contended for by appellants is utterly irrelevant. Clearly, the purpose of section 13 (4) to relieve interstate commerce and interstate carriers from such burdensome State rates does not depend upon whether or not each and every of the carriers involved is engaged in precisely the same kind of haul interstate as intrastate.

CONCLUSION

It is respectfully insisted that the decision of the lower court should be sustained and the bill dismissed.

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APPENDIX

Pertinent in the consideration of the case are the following provisions of the Interstate Commerce Act (U.S. Code, Tit. 49):

Section 1 (5):

> All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: * * *

Section 13 (2):

> Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been

appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

Section 13 (3):

Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making

authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act.

Section 13 (4):

Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classifications, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

Section 16 (a):

> That after a decision, order, or requirement has been made by the Commission in any proceeding any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear. Applications for rehearing shall be governed by such general rules as the Commission may establish. * * *

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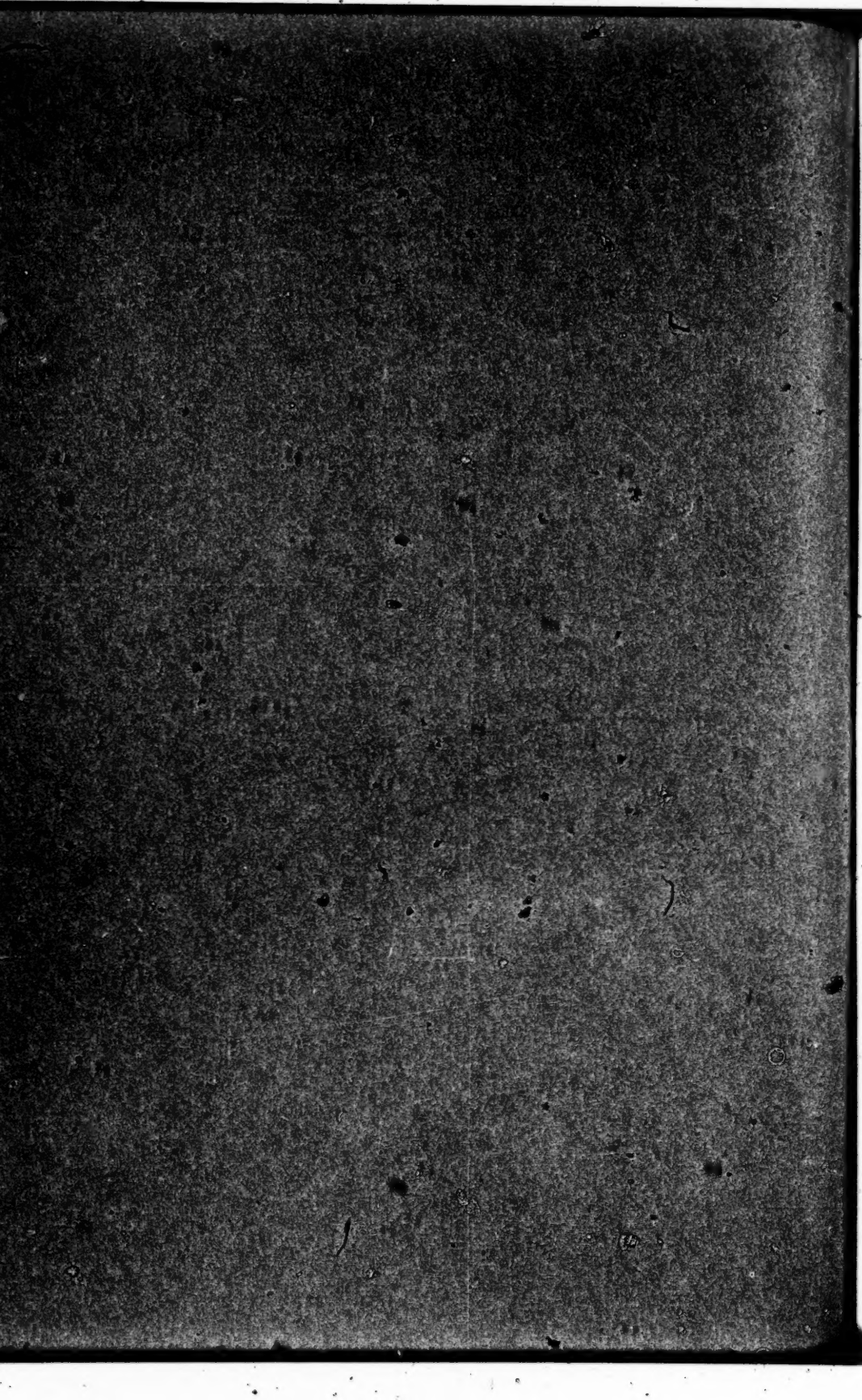

SUPREME COURT OF THE UNITED STATES.

No. 787.—October Term, 1933.

Illinois Commerce Commission, Public Service Commission (of Indiana), Board of Trade of the City of Chicago, and Acme Steel Company, Appellants, *vs.* The United States of America, the Alton Railroad Company, the Atchison, Topeka and Santa Fe Railway Company.	Appeal from the District Court of the United States for the Northern District of Illinois.

[May 28, 1934.]

Mr. Justice Stone delivered the opinion of the Court.

This is an appeal under the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219, 220, from a decree of a District Court for Northern Illinois, three judges sitting, which dismissed the complaint upon which appellants sought to set aside an order of the Interstate Commerce Commission, — Fed. Sup. —.

The order, made under § 13 (3) (4) of the Interstate Commerce Act, directed the removal of unjust discrimination against interstate commerce, resulting from disparity of the intrastate and interstate switching rates of interstate rail carriers in the Chicago Switching District, lying partly in Illinois and partly in Indiana. It provided that the intrastate rate should be not less than the interstate switching rates prescribed in an earlier order of the Commission in *Switching Rates in the Chicago Switching District*, 177 I. C. C. 69, of 3¢ per 100 lbs. for one-line hauls, 3.5¢ for two-line hauls, and 4¢ for three-or-more-line hauls, of carloads of minimum weight of 60,000 lbs. The rates, both interstate and intrastate, which were thus displaced were commodity rates of 2.5¢ per 100 lbs. for one and two-line hauls, and 3¢ for three-or-more-line hauls. The rates are for district intrastate switching movements, having no relation to main line movements. They are chiefly between local industries, involve a complete service originating and

terminating within the district, and embrace a loaded and empty car movement and two complete terminal services.

The Commission, of its own motion, began the first proceeding in *Switching Rates in the Chicago Switching District, supra,* in which the carriers, interested shippers, and the state commissions of Illinois and Indiana were parties, and in the course of which extensive hearings were conducted jointly by the Interstate Commerce Commission and the two state commissions. Pending this proceeding, the carriers were directed by the Interstate Commerce Commission to make a cost study of switching movements in the District. This study, which involved the preparation of statistics showing the longest, shortest and average hauls within the District and detailed cost data for selected periods in 1926-1927, was completed and submitted to the Commission and was an important part of the evidence on which it based its decision.

In its report and order, made July 31, 1931, the Commission found the rates which it prescribed for interstate switching service to be reasonable for future application on all commodities shipped within the District, except railway equipment on its own wheels. It also stated that a large percentage of the traffic was intrastate in character, but that the record did not disclose any difference in the conditions surrounding the handling of the interstate and intrastate movements. It made no order with respect to the intrastate traffic, but expressed the hope that the two state commissions would bring the intrastate rates into harmony with the interstate rates which it had prescribed.

The state commissions failed to prescribe a higher level of intrastate rates, and the carriers of the District, shortly after the new rates became effective, filed with the Interstate Commerce Commission a petition to establish an increased rate for intrastate traffic, whereupon the Commission, on November 2, 1931, reopened the proceeding for further hearing with respect to the relationship of intrastate and interstate rates. A complaint filed with the Commission by numerous shippers attacking the lawfulness of the interstate switching rates was assigned for hearing with the proceeding already pending.

At the hearings, the state commissions in one proceeding and the shippers in the other offered evidence which, by stipulation, was treated as received in both, to show that the interstate switching

rates were unreasonably high, and in support of allegations that the cost study made in the first proceeding was defective because of changed conditions. The Commission consolidated the two dockets in one report, and by its report and order of July 3, 1933, 195 I. C. C., assailed here, it dismissed the complaint of the shippers with respect to the interstate rates and placed the intrastate rates on the same basis as the interstate rates already in effect. Before the hearings were closed motions of the state commissions and shippers, appellants here, that a further and more detailed cost study be made, which it was contended would be more representative of the traffic, and which would reflect conditions in 1932, five years after the period selected for study, were denied. The same questions were raised by motions to reopen the proceedings in the two dockets, or for reargument, to reconsider the cost study, which were also denied.

In the District Court below the case was submitted upon the pleadings, the two reports and orders of the Commission, and certified copies of the evidence and exhibits before the Commission in the second proceeding. The court dismissed the complaint upon findings of fact and law, rejecting the several contentions which appellants make before us.

The scope and application of § 13 (4) have so recently been fully considered in opinions of this Court in *United States* v. *Louisiana*, 290 U. S. 70; *Florida* v. *United States*, No. 349, decided April 2, 1934; see also *Georgia Public Service Commission* v. *United States*, 283 U. S. 765; *Florida* v. *United States*, 282 U. S. 194; that it is unnecessary to repeat that discussion here. Under § 13 (4) of the Interstate Commerce Act, the Interstate Commerce Commission is given plenary power to remove the discrimination created by intrastate rates against interstate commerce, by raising intrastate rates so that the intrastate traffic may produce its fair share of the revenue required to meet maintenance and operating costs and to yield a fair return on the value of property devoted to the transportation service. The question for decision is whether the order of the Commission directing the removal of the discrimination is supported by the findings, based upon substantial evidence.

The numerous objections to the order are grounded for the most part on an elaborate analysis and discussion of the evidence. All have received our attention, but so far as they require our discussion they may be summarized as follows: (1) The order of the

Commission is void because of its abuse of discretion in denying the motions for an order requiring that the original cost study be supplemented by a further and more detailed study which would reflect conditions in 1932 and in denying the petition for reopening the proceedings or reargument for reconsideration of the effect to be given the cost study. (2) The order is not supported by the findings. (3) Certain essential findings are not supported by evidence. (4) The order is too indefinite to be applied.

1. The alleged abuse of discretion by the Commission is not that it refused to consider the contention of appellants as to the sufficiency of the cost study in the light of the facts relied upon, see *Atchison, Topeka and Santa Fe Railway Co.* v. *United States*, 284 U. S. 248, but that it decided these contentions wrongly. There can be no serious doubt that the cost study faithfully represented conditions obtaining during the periods in 1926-1927 selected for study. It was characterized by the Commission as "perhaps more exhaustive" than any previously undertaken in proceedings involving switching charges. To the seven carriers of the thirty-five serving the District, originally chosen for study during selected periods, eight others were added on the initiative of the Commission. A request of certain of the appellants that the Chicago Junction Railway be included in the study was denied, the Commission pointing out in both reports that because of the short hauls on this line it did not regard the traffic as representative. Appellants urge specifically that if all the lines in the District were not to be included, this line should have been, in order to make the study fairly representative; but the Commission considered the issue of fact so raised and decided to the contrary.

The principal contention is that conditions since 1927 have so changed that a new study should be made. The changes emphasized are (1) falling off in volume of traffic, (2) improvement of highways in the District resulting in diversion of traffic from the rail lines for movement by truck; (3) the decline in value of many of the articles transported; (4) reduction in wages and cost of supplies; and (5) curtailment of the amount of service rendered by carriers to industries within the District. In considering these changes on the basis of the data already in the record, the Commission pointed out that they had resulted in increased unit costs because unaccompanied by a corresponding or proportionate decrease in operating expense. It also concluded, upon the basis

of data before it, that in view of the improvement of highways and trucking facilities and other changes in conditions affecting traffic the Commission could not, even though it were its duty to do so, provide a rate which would enable the railroads to compete successfully with trucking movements, by which the traffic had been diverted. The Commission decided that, on the record before it, it was able to consider the effect of the factors suggested by appellants and that a new cost study was unnecessary.

Whether or not the cost study was representative, whether the study should have been more refined, and whether it should have been supplemented as appellants desired, are questions of fact, the determination of which is within the competence of the Commission. The Commission reached its conclusion after full hearing and thorough consideration of all questions presented. As the record affords a sufficient basis for the Commission's determination, it is not subject to review in the courts. See *Manufacturers Railway Company* v. *United States*, 246 U. S. 457, 481; *Assigned Car Cases*, 274 U. S. 564, 580.

2. The Commission's findings are to be read in the light of traffic conditions, fully disclosed in the evidence and described in the Commission's report. The Chicago Switching District comprises an area of more than 600 square miles, served by thirty-five railroads, which maintain there more than 5,000 miles of track, serving 4,000 private industries. The District is essentially a unit, so far as switching movements are concerned. Interstate and intrastate traffic are commingled in switching movements and handled in the same manner indiscriminately, often in the same trains and by the same crews. As already noted, the movements have no relation to main line hauls, are chiefly between local industries, involve a complete service originating and terminating within the District, a loaded and empty car movement, and two complete terminal services.

In the original proceeding, no party took the position that a rate should apply on intrastate traffic within the District different from that applied to interstate traffic, the only substantial issue being whether the rates finally adopted and applied to interstate traffic were too high. In the second proceeding, after considering and stating at length the evidence showing the effect upon interstate commerce of the lower rates prevailing upon intrastate traffic of the same general character, and the probable effect in an in-

creased return to the carriers if the intrastate rate were raised to the interstate level, the Commission found that the transportation conditions throughout the Chicago Switching District are substantially similar; that they are no more favorable to interstate movements than to intrastate movements within the District; that the established interstate scale of rates was reasonable and not shown, when applied intrastate, to have or cause any undue preference and advantage to the persons or localities in intrastate commerce, or any undue preference and advantage to persons and localities in interstate commerce; that the lower intrastate rates had resulted and would for the future result in unjust discrimination against interstate commerce. The report dealt at length with the evidence showing probable increase in revenue which would result if the intrastate rates were raised to the interstate level; comparisons based on the recorded traffic in 1926 and in November, 1931, and January, 1932, indicated a loss of revenue by the maintenance of the lower intrastate rate in excess of $1,000,000. These findings, which are supported by detailed subsidiary findings in the report, are ample to support the order. *Florida* v. *United States,* No. 342, *supra.* They disclose no such defects as were found in *Florida* v. *United States,* 282 U. S. 194, or urged in *United States* v. *Louisiana, supra.*

Specific objections to the sufficiency of the findings, so far as they are not already disposed of by what has been said, are that there is no finding that the intrastate rates, before the increase, were less than maximum reasonable rates, and there was no finding which separated interstate and intrastate property, revenues and expenses of the carriers so as to make it possible to compare revenues with cost for the two classes of traffic considered separately. But these objections, and others which we need not stop to consider in detail, leave out of account the nature of the traffic and the significance of the principal and subsidiary findings showing that the conditions throughout the District were substantially the same for both classes of traffic, which were handled in the same manner. The inquiry in both proceedings was directed to the commerce of the District as a unit. The decision in the first proceeding, that the increase in interstate rates was reasonable, was made in the hope that the state commissions would bring intrastate rates into harmony. When they failed to do so, the Commission reaffirmed its finding that the new interstate rates were reasonable

and found that the intrastate rates must be raised in order that the intrastate traffic may bear its fair share of the revenue burden. It is plain from the nature of the inquiry that the rate level, to which both classes of traffic were raised, was found reasonable on the basis of the traffic as a whole. Where the conditions under which interstate and intrastate traffic move are found to be substantially the same with respect to all factors bearing on the reasonableness of the rate, and the two classes are shown to be intimately bound together, there is no occasion to deal with the reasonableness of the intrastate rates more specifically, or to separate intrastate and interstate costs and revenues. Compare *American Express Co.* v. *Caldwell*, 224 U. S. 617; *United States* v. *Louisiana*, *supra*; *Florida* v. *United States*, No. 342, *supra*.

3. Appellants contend there is no evidence in the record to support the Commission's findings that the prescribed interstate rate was reasonable or that after the increase in that rate the old intrastate rate unjustly discriminated against interstate commerce. Appellants reach their conclusion as to the reasonableness of the interstate rate by disregarding the cost study as evidence because, as is contended, it was erroneously considered by the Commission. But as we have already said it was for the Commission to determine whether the cost study was adequate or whether it was necessary to refine or supplement it in order to make it dependable evidence for the purpose of rate making. The study itself afforded evidence of the reasonableness of the rate fixed, and upon the whole record there was abundant support for the Commission's finding, which was carefully and thoroughly considered in its report. There is no basis upon which the courts, not authorized to weigh evidence, could reexamine or disregard its conclusion.

The increased intrastate rate applied to grain, to which specific objection is made, does not stand on a different footing. This objection is also predicated upon the mistaken assumption that the Commission should have disregarded the cost study and traffic analysis as evidence. It is true that the rates on grain were not included in the all-commodity rate prevailing in the District before the first proceeding was initiated, and were not uniform throughout the District, but the proceeding was reopened by the Commission to investigate the lawfulness of "all rates and charges . . . of all carload traffic" interstate, and their relationship to like rates and charges intrastate. It acted upon a record showing that the

grain moved intra-District, under the same conditions as other commodities, and the Commission had before it evidence showing that the cost of the traffic largely exceeded the revenue derived from the old rates and that a rate on a distance or zoning basis was impracticable.

Similarly, the finding of unjust discrimination against interstate commerce made in the second report rests upon evidence. The effect of maintaining a lower rate, intrastate, than the reasonable interstate rate is necessarily discriminatory wherever the two classes of traffic, inextricably intermingled, are carried on, as in the District, under substantially the same conditions. Compare *United States* v. *Louisiana, supra.* Moreover, it appeared that many of the railroads cannot move traffic between points of origin and destination in Indiana and between points of origin and destination in Illinois without crossing the state line, and thus subjecting the shippers to the interstate rate; that some of the industries are located on both sides of the state line and that some of the assembling yards and interchange tracks overlap state lines. On the other hand, many industries, in preference to a more direct interstate route, resort to intrastate routes to obtain lower rates, although they are so-called "unnatural" routes, against the flow of traffic, and therefore entail additional expense in handling. Evidence to show the extent of the burden upon the carriers' revenues, and the diversion of traffic from interstate to "unnatural" intrastate movements, is found both in the testimony of the carrier witnesses and in exhibits of record.

Appellants recur to their criticism of the cost study and insist that in view of differences between average lengths of haul between intrastate and interstate movements, costs and revenues intrastate and interstate should have been segregated. But this objection is directed not only to the conclusion of the Commission, already considered, that the cost study was representative and dependable evidence, but is based upon the assumption that the Commission should disregard the long history of rates in the Switching District, in the course of which a commodity rate, generally applicable without regard to distance, had been built up through the District, and that upon a review of the evidence we are free to reject the Commission's conclusion that a distance or zone rate should not apply. Upon this subject there was substantial testimony supporting the reasonableness of uniform commodity rates in preference to a distance or zone rate. So far as this objection is of any force it

goes only to the weight of the evidence and not to the want of it. Treating an area as a unit and applying a uniform blanket or group rate within it, as is the common practice with respect to switching rates, is within the competence of the Commission. See *St. Louis Southwestern Ry.* v. *United States,* 245 U. S. 136, 138, Note 1, 141; *United States* v. *Illinois Central R. R.,* 263 U. S. 515, 518, Note 1; *Virginian Railway* v. *United States,* 272 U. S. 658, 660, 664.

4. Appellants contend that the order cannot be applied to certain carriers whose rails extend only into the Illinois section of the District. As in terms it directs that intrastate rates be established on the level of the interstate switching rates maintained by the carriers who are parties to the proceeding, it is said to be inapplicable to those carriers which because they do not cross state lines in their switching operations have filed no interstate switching rates. But we think the order is not to be read so narrowly. It is made applicable to all the carriers in the District and directs that the intrastate ~~shipping~~ switching rates shall be maintained on a parity with the interstate rates "contemporaneously applied by the said carriers". On its face it would seem that the quoted phrase was intended only to describe the intrastate rates maintained by such of the carriers as had occasion to establish interstate switching rates. But if this were doubtful the order is to be read with the report. *Georgia Public Service Commission* v. *United States, supra,* 771; *American Express Co.* v. *Caldwell, supra,* 627. So read there can be no doubt that it was intended to prescribe for all intrastate traffic within the District the same rate as that prescribed for all interstate traffic there, and that interstate carriers whose rails are confined to either state and which for that reason have filed no interstate switching rates are nevertheless required to adopt the prescribed intrastate rate.

Appellants also urge that interstate carriers whose rails reach only the Illinois part of the District cannot be required to remove a discrimination against interstate commerce unless they participate in both the prejudicial and preferential rates, as was said in *Texas & Pacific Railway Co.* v. *United States,* 289 U. S. 627, with respect to discriminations between localities forbidden by § 3 of the Act. But this restriction has no relevance to proceedings under § 13 (4) directed to the removal of discriminatory intrastate rates maintained by state authority. By that section the Interstate Commerce Commission is expressly authorized to prescribe the intrastate rates which will remove the discrimination.

Affirmed.